



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

SECNAVINST 1920.6B  
PERS-834D  
13 December 1999

SECNAV INSTRUCTION 1920.6B

From: Secretary of the Navy  
To: All Ships and Stations

Subj: ADMINISTRATIVE SEPARATION OF OFFICERS

Ref: (a) Title 10, United States Code  
(b) DoD Directive 1332.30 of 14 Mar 97 (NOTAL)  
(c) SECNAVINST 1850.4D  
(d) DoD Instruction 1336.1 of 6 Jan 89  
(e) DoD 8320.1-M of Mar 94  
(f) SECNAVINST 5300.28C  
(g) SECNAVINST 5510.30A  
(h) SECNAVINST 1900.10A  
(i) Defense Officer Personnel Management Act  
(DOPMA), Pub. L. No. 96-513, 94 Stat. 2835 (1980)  
(j) SECNAVINST 1412.8 (NOTAL)  
(k) SECNAVINST 1412.9A (NOTAL)  
(l) SECNAVINST 1420.1A  
(m) SECNAVINST 1421.7B (NOTAL)  
(n) DoD Directive 1304.19 of 18 Sep 93 (NOTAL)

Encl: (1) Definitions  
(2) Policy Governing Voluntary Separation  
(3) Policy Governing Involuntary Separation  
(4) Guidelines on Separations For Cause  
(5) Guidelines on Characterization of Service  
(6) Guidelines on Recommendations - Grade at Retirement  
(7) Notification Procedure  
(8) Administrative Board Procedures  
(9) Guidelines for Fact-finding Inquiries into Homosexual Conduct

1. Purpose. To revise policies, standards, and procedures for the administrative separation of Navy and Marine Corps officers from the Naval Service in accordance with references (a) and (b). This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 1920.6A.

3. Effective Date

a. This instruction is effective 90 days after signature and shall control all administrative separation proceedings initiated on or after that date. Proceedings are considered to be initiated on the date a command receives a written request for separation from an officer, or on the date a command delivers to an officer a notice of intent to start separation proceedings.

b. Separation proceedings initiated prior to the effective date of this instruction will be continued under policy and instructions in effect prior to that date.

4. Applicability

a. Under the authority of references (a) and (b), this instruction provides for the revocation of commissions, discharge, termination of appointments, release from active duty, retirement for length of service, and dropping from the rolls of Navy and Marine Corps officers. The policies, reasons for separation, and provisions for characterization of service set forth in this instruction apply to all officers and warrant officers of the Regular and Reserve components of the Navy and Marine Corps.

b. This instruction does not apply to discharge or dismissal by reason of court-martial sentence under reference (a), or discharge or retirement for physical disability under reference (c).

5. Definition. Definitions and rules of interpretation used in this instruction are provided in enclosure (1).

6. Background. Once an individual has legally accepted a commission or warrant as a Regular or Reserve officer in the Navy or Marine Corps and has executed the oath of office, he or she has acquired a legal status which continues until it is terminated through a specific, legally authorized process. Neither retirement nor release from active duty affects an individual's status as a commissioned or warrant officer until the officer's commission or warrant has been terminated.

7. Policy. It is Department of the Navy policy to promote the readiness of the Naval Service by maintaining authorized strength levels in each grade and competitive category and by maintaining

the highest standards of conduct and performance in the officer corps. To meet these objectives, it is necessary to provide for orderly and expeditious administrative separation of officer personnel.

a. The administrative separation policies and procedures in this instruction will support accession, promotion, redesignation, retirement, and resignation policies to:

(1) maintain authorized strength in each competitive category and grade;

(2) ensure planned promotion flow and reasonable career opportunities in each competitive category;

(3) attain and maintain an all Regular active-duty career force in each competitive category, supplemented when necessary with Reserve officers to meet current authorized strength and special skills requirements; and

(4) sustain the traditional concepts of honorable military service and special trust and confidence placed in commissioned officers.

b. Officers being processed for separation for cause shall be processed expeditiously. Such officers should receive sufficient supervision to preclude adverse effects on the good order and discipline in their unit. Further, when local processing has been completed and separation has been recommended, the officer concerned shall be physically separated from the command whenever possible by means of leave, temporary reassignment, or other methods while processing is being completed by the chain of command.

c. Standards and procedures established in execution of these policies are intended to achieve consistency of application in a naval leadership system based on command responsibility, accountability, and discretion. The standards and procedures are set forth in enclosures (2) through (9), under guidance from references (a) through (n).

8. Completion of Statutory Service Obligation. Officers will normally be retained in a commissioned status in order to fulfill the statutory service obligation referred to in section 651 of

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reference (a) and subparagraph 4a of enclosure (2). Exceptions to this general rule are as follows:

a. An officer who is discharged from a Regular component for cause for any reason other than substandard performance of duty shall not be tendered a Reserve commission and therefore shall not be transferred to the Ready Reserve to fulfill his or her statutory service obligation.

b. A Reserve officer on active duty or in an active status not on active duty who would otherwise be discharged for cause for any reason other than substandard performance of duty will not be transferred to or retained in the Ready Reserve to fulfill his or her statutory service obligation.

c. An officer will not be transferred to or retained in the Ready Reserve when there are medical reasons why he or she would not be available to meet mobilization requirements.

9. Separation Pay. SECNAVINST 1900.7G governs entitlement to separation pay for officers who are involuntarily separated under the provisions of this instruction.

10. Processing Time Goals. To support policy objectives and further the efficient administration of officer separations, every effort shall be made to adhere to the following time goals for processing separations. Failure to process an administrative separation within the prescribed time goals shall not create a bar to separation or characterization. Separation processing should be completed:

a. By the date of fulfillment of service obligation for separations upon fulfillment of service obligation.

b. Thirty days from the date a command notifies an officer of the commencement of separation proceedings in cases where no Board of Inquiry (BOI).

c. Ninety days from the date a command notifies an officer of the commencement of separation proceedings in cases where a BOI is required.

11. Establishing Additional Reasons for Separation. Should the need arise to separate officers for a reason not established in enclosures (2) or (3) of this instruction, the Chief of Naval

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Operations (CNO) and the Commandant of the Marine Corps (CMC) may propose to the Secretary of the Navy (SECNAV), the establishment of a new reason for separation to be included in this instruction. Submission for such additional reasons shall contain the basis for separation, recommended characterization of service or description for the separation, and the procedure for the separation. Separation under any proposed reason will not be executed until the proposal has been approved.

12. Provision of Information During Separation Processing.

During separation processing, the purpose and authority of the Discharge Review Board and the Board for Correction of Naval Records shall be explained in a fact sheet. It shall include an explanation that a discharge under Other Than Honorable conditions, resulting from a period of continuous unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration notwithstanding any action by a Discharge Review Board. These requirements are a command responsibility and not a procedural entitlement. Failure on the part of the member to receive or to understand the explanation required by this paragraph does not create a bar to separation or characterization.

13. Responsibilities

a. For all purposes under this instruction, with the exception of cases involving flag and general officers, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) is designated to act on behalf of the Secretary.

b. CNO and CMC are responsible for implementing the policies, standards, procedures and goals established in this instruction in a manner that ensures consistency in separation policy including revision or cancellation of conflicting guidance.

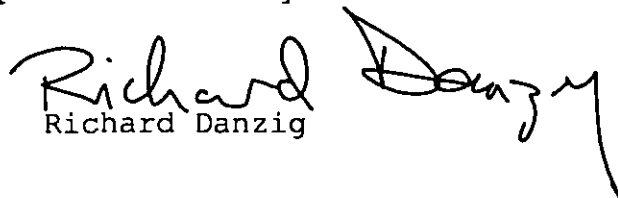
c. CNO and CMC shall ensure that only the specific reasons for separations provided in this instruction are used in classifying officer administrative separations. They shall also ensure that these specific reasons appear on appropriate copies of the officer's DD 214, Certificate of Release or Discharge from Active Duty, under reference (d) and are reported using the

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separation codes of reference (e). In all cases involving drug offenses, the applicable drug offense shall be shown.

d. The Chief of Naval Personnel (CHNAVPERS) and the Deputy Chief of Staff for Manpower and Reserve Affairs (DC/S (M&RA)) are designated as the Show Cause Authority for the Navy and the Marine Corps respectively, and are delegated the authority to review records to determine whether an officer should be required to show cause for retention in the Naval Service and to convene BOIs as provided in enclosure (8). CHNAVPERS may further delegate this authority to Commander, Navy Personnel Command (CNPC) and Officers Exercising General Court-Martial Jurisdiction (OEGCMJ) with a Staff Judge Advocate (SJA) assigned. The CMC may further delegate this authority to the Director, Marine Corps Staff. Show Cause Authority may be further delegated within the Marine Corps to generals and lieutenant generals in command. Additionally, CHNAVPERS and DC/S (M&RA) are delegated the authority of approving Resignation/Discharge Orders and Certificates in routine matters. CHNAVPERS may further delegate this authority to Commanding Officer, Naval Reserve Personnel Center.

14. Report. The reporting requirements contained in this instruction are exempt from reports control by SECNAVINST 5214.2B.

  
Richard Danzig

Distribution:

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# DEFINITIONS

1. Active commissioned service. Service on active duty as a commissioned officer or commissioned warrant officer.
2. Active duty. Full-time duty in the active military service of the United States. This term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by SECNAV.
3. Active duty for training. Active duty for Reserve training with automatic reversion to inactive duty upon completion.
4. Active-duty list. Separate lists of Navy and Marine Corps officers, required to be maintained by SECNAV under section 620 of reference (a) of all officers on active duty in the Navy and Marine Corps, other than officers described in section 641 of reference (a).
5. Active service. Service on active duty.
6. Active status. The status of a Reserve commissioned or warrant officer, other than a commissioned warrant officer, who is a member of the Ready Reserve or Standby Reserve-Active, including Reserve officers on the active duty list.
7. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
8. Board of Inquiry (BOI). A board convened under section 1182 or section 14903 of reference (a) to receive evidence and make findings and recommendations as to separation for cause and characterization of service under this instruction in the case of an officer.
9. BOI report. Includes the BOI record of proceedings (transcript) and BOI findings and recommendations (results of the Board).
10. Characterization of service. Classification of quality of service rendered.

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11. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that, under pertinent official directives, is recognized as a "command."
12. Commissioned officer. An officer in any of the Military Services who holds a grade and office under a commission signed by the President, and who is appointed as a Regular or Reserve officer, other than a commissioned warrant officer or retired commissioned officer.
13. Commissioned service. All periods of service as a commissioned officer or a commissioned warrant officer in the Army, Navy, Air Force, or Marine Corps, while on active duty or in an active, inactive, or retired status.
14. Continuous service. Military service, unbroken by any period in excess of 24 hours.
15. Controlled substance. A drug or other substance included in Schedules I, II, III, IV, or V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236) (NOTAL) as updated and republished under the provisions of that Act, as amended.
16. Convening Authority. SECNAV or his delegates authorized to appoint boards under this instruction.
17. Counsel. A lawyer qualified under Article 27(b)(1), Uniform Code of Military Justice, or a civilian lawyer retained at the officer's expense.
18. Discharge. The termination of an officer's obligation to render service and complete severance from all military status.
19. Dismissal. Separation of a commissioned officer, effected by sentence of a general court-martial, or in commutation of such a sentence, or, in time of war, by order of the President, or separation of a warrant officer, W-1, who is dismissed by order of the President in time of war. A complete severance from all military status.



20. Drop from the rolls. A complete severance of military status under specific statutory authority, without characterization of service.

21. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

22. Homosexual Act. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

23. Homosexual conduct. A homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

24. Homosexual Marriage or Attempted Marriage. When a member has married or attempted to marry a person known to be of the same biological sex.

25. Legal advisor. A judge advocate certified in accordance with Article 27(b), Uniform Code of Military Justice, appointed to assist boards convened to consider the separation or retention of officers.

26. Non-probationary commissioned officer. A commissioned officer other than a probationary commissioned officer.

27. Probationary commissioned officer. A Regular or Reserve commissioned officer on the active duty list with less than 5 years of active commissioned service. However, a Reserve commissioned officer serving in an active status before October 1, 1996, who was in a probationary status prior to that date, shall be a probationary commissioned officer for a period of 3 years from the date of his or her appointment as a Reserve commissioned officer. Regular warrant officers with less than 3 years and Reserve warrant officers with less than 5 years of service as a warrant officer.

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28. Propensity to Engage in Homosexual Acts. A likelihood that a person engages in or will engage in homosexual acts, which is more than an abstract preference or desire to engage in homosexual acts.

29. Qualified resignation. A resignation for which the least favorable characterization of service allowed is General (Under Honorable Conditions).

30. Release from active duty. The transfer of a Reserve officer from active duty to inactive duty.

31. Reserve Active-Status List (RASL). Each of the separate lists required to be maintained under section 14002 of reference (a) for the Navy and Marine Corps Reserve which shall include the names of all Reserve officers of each armed force except warrant officers (including commissioned warrant officers) who are in an active status and are not on an active-duty list.

32. Resignation. The request, by an officer, to be divested of his or her commission or warrant. May be classified as unqualified, qualified, or for the good of the service as defined in this enclosure. Upon acceptance by the Secretary and completion of all administrative procedures, it represents a complete severance from all military status.

33. Resignation for the good of the service. A resignation for which the least favorable characterization of service allowed is Under Other Than Honorable Conditions.

34. Respondent. A commissioned officer required to show cause for retention on active duty or as a member on the Reserve Active-status List.

35. Retention on active duty. The continuation of an individual on active duty as a commissioned or warrant officer of the Regular Navy or Marine Corps or the Naval or Marine Corps Reserve.

36. Revocation of appointment/revocation of commission/termination of appointment. A complete termination of the military service status of an officer.

37. Separation. A general term which includes discharge, dismissal, dropping from the rolls, revocation of an appointment or commission, termination of an appointment, retirement, or resignation.

38. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

39. Sexual perversion. Includes:

- a. Lewd and lascivious acts.
- b. Sodomy.
- c. Indecent exposure.
- d. Indecent act(s) with, or indecent assault on, a person below the age of 16.
- e. Transvestitism or other abnormal sexual behavior.
- f. Other indecent act(s) or offense(s).

40. Show Cause Authority. Any of the following when expressly designated by SECNAV:

a. Commanders of reserve personnel centers, commanders exercising general court-martial convening authority and all general and flag rank officers in command who have a judge advocate or legal advisor available.

b. Officers (not below the grade of major general or rear admiral) designated by SECNAV to determine, based on a record review, that an officer shall be required to show cause for retention in the military service.

41. Statement that a Member is a Homosexual or Bisexual, or Words to That Effect. Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts. This may include statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

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42. The Secretary. The Secretary of the Navy.

43. Unlawful drug involvement. Includes:

a. Drug abuse - the illegal or wrongful use or possession of controlled substances.

b. Drug trafficking - the illegal or wrongful distribution or possession with intent to sell or transfer controlled substances.

c. Drug paraphernalia - the illegal or wrongful possession or distribution of drug paraphernalia as set forth in reference (f).

44. Unqualified resignation. A resignation for which the only characterization of service allowed is Honorable.

POLICY GOVERNING VOLUNTARY SEPARATION

1. Resignation

a. General. Officers serve at the pleasure of the President and no terminal dates are established for their commissions. SECNAV, by virtue of his authority to act for the President, may establish such criteria for the voluntary resignation of an officer's commission as deemed necessary for the maintenance of a sound officer corps.

b. Submission of Requests. CHNAVPERS and DC/S (M&RA) shall establish procedures for the submission of individual resignation requests.

c. Processing resignation requests. CHNAVPERS and DC/S (M&RA) may, on behalf of the Secretary, accept voluntary resignations for reasons authorized in paragraph 5 of this enclosure following the guidelines in subparagraphs (1) through (3).

(1) CHNAVPERS and DC/S (M&RA) may deny, for the Secretary, requests that do not satisfy the criteria set forth in paragraphs 4 and 5 of this enclosure. In addition, requests for voluntary resignation for reasons specified in paragraph 5 of this enclosure will normally be denied when:

(a) The officer does not comply with the procedures established by CHNAVPERS and DC/S (M&RA) for the submission of individual resignation requests.

(b) The officer has not completed all service prescribed in the officer program through which accessed and which was incurred by the officer in consideration for being tendered an initial appointment.

(c) CHNAVPERS or DC/S (M&RA) has determined that a significant personnel shortage in the officer's competitive category, designator, occupational field, military occupational specialty (MOS), or other authorized officer classification constitutes a compelling military necessity requiring the officer's retention.

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(d) The officer has not completed obligated service incurred for advanced education or technical training requiring additional obligated service, including postgraduate education, service school or college, law school, medical residency, flight training, naval flight officer training, and equivalent programs.

(e) The officer has been officially notified of orders, or has executed orders and has not served the required period of time at the new duty station, as prescribed by CHNAVPERS or DC/S (M&RA).

(f) The officer has not completed obligated service incurred as a result of:

1. Transfer into the Regular Navy or Marine Corps,
2. Lateral transfer between competitive categories or designators,
3. Entering a program, or
4. Receiving an incentive pay, continuation pay, or bonus.

(2) A resignation has no effect until accepted by the Secretary or by CHNAVPERS or DC/S (M&RA) when acting on behalf of the Secretary.

(3) Guidelines for officers being considered for separation for cause under enclosure (3) are contained in paragraph 11 of enclosure (4).

d. Characterization of Service. Generally, officers whose resignations are accepted by SECNAV for any reason set forth in paragraph 5 of this enclosure shall be honorably discharged from the component of which they are members. Discharge may be General (Under Honorable Conditions) or Other Than Honorable when an officer requests such characterization and such characterization is consistent with guidelines contained in enclosure (5) of this instruction.

2. Release of Reserve Officers from Active Duty. CHNAVPERS or DC/S (M&RA) may, acting for the Secretary, release Reserve

officers upon their request from active duty for reasons set forth in paragraph 5 of this enclosure, unless processing for separation for cause under paragraph 1 of enclosure (3) is warranted.

3. Regular Officers Requesting Reserve Commissions Upon Resignation

a. Regular officers requesting resignation under the provisions of this enclosure who have completed the statutory service obligation referred to in paragraph 4a of this enclosure and who request a Reserve commission upon resignation from the Regular Navy or Marine Corps shall normally be tendered such a commission, provided a requirement exists for the officer's skill in the grade and competitive category in which the officer would serve in the Naval or Marine Corps Reserve. CHNAVPERS and DC/S (M&RA) shall neither tender nor award Reserve commissions to such officers whose voluntary resignation request is incident to separation in lieu of trial by court-martial under enclosure (3) or in lieu of separation for cause processing under enclosure (4).

b. The Marine Corps Reserve has no limited duty officers (LDOs). Marine Corps Regular LDOs requesting resignation from the Regular Marine Corps who request a Reserve commission shall normally be tendered such a commission in the warrant officer grade they would have held had they been serving as a warrant officer in the Regular Marine Corps, provided a requirement exists for their MOS in that grade in the Marine Corps Reserve.

c. Regular officers whose requests for Reserve commissions are approved shall be assigned in the Ready Reserve upon resignation from the Regular Navy or Marine Corps and acceptance of the appointment in the Naval or Marine Corps Reserve.

4. Statutory Service Obligation

a. Under the guidance provided by Department of Defense (DoD) Directive 1304.25 of 25 August 1997 (NOTAL), each person who becomes a member of the Armed Forces on or after 1 June 1984 shall serve in the Armed Forces for a total of 8 years. Any part of the service obligation that is not performed on active duty shall be performed in a Reserve component.

b. Except for reasons of dependency or hardship (paragraph 5d(1) of this enclosure), resignation requests from Regular

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officers who have not completed the statutory service obligation referred to in paragraph 4a of this enclosure will normally be approved only upon acceptance of a Reserve commission that shall be held at least until completion of such service.

c. Except for reasons of dependency or hardship or for discharge to become a minister (paragraphs 5d(1) and 5h of this enclosure), resignation requests from Reserve officers who have not completed the statutory service obligation referred to in paragraph 4a of this enclosure will normally be denied by CHNAVPERS or DC/S (M&RA). However, Reserve officers who are serving on active duty may be voluntarily released from active duty for reasons set forth in paragraph 5 of this enclosure and transferred to the Ready Reserve until completion of that obligation, unless medical reasons preclude such transfer. CHNAVPERS or DC/S (M&RA) shall accomplish such releases from active duty under the provisions of section 12313 of reference (a) and this instruction.

d. CHNAVPERS and DC/S (M&RA) may waive active obligated service incurred for technical training in cases where a member who has completed technical training is permanently disqualified for operational services in his or her designator, warfare specialty, military occupational specialty, or special qualification through no fault of the member.

## 5. Reasons for Voluntary Separation

a. Expiration of Statutory Service Obligation. An officer may be separated upon completion of the statutory service obligation referred to in paragraph 4a of this enclosure provided the officer has no other obligated service.

b. Expiration of Obligated Service. An officer may be separated upon completion of all service prescribed in the officer program through which accessed, any other obligation incurred by the officer in consideration for being tendered an initial appointment, and any additional obligated service incurred by the officer while serving on active duty, or in an active status in the Ready Reserve.

c. Change of Career Intention. Some officers who completed their minimum service requirement and then decided to remain on active duty intending to serve full careers may later seek



separation before attaining retirement eligibility to pursue a civilian career. Officers who submit resignations after continuing in service beyond their minimum service requirement shall be separated for Change of Career Intention unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

d. Convenience of the Government. An officer may be separated for the Convenience of the Government for the reasons set forth below. Separation of an officer for the Convenience of the Government is subject to the resolution of any outstanding disciplinary actions involving the officer.

(1) Dependency or Hardship. Separation of an officer may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the service, and the officer has made every reasonable effort to remedy the situation;

(c) Separation will eliminate or materially alleviate the condition; and

(d) There are no other means of alleviation reasonably available.

(2) Pregnancy or Childbirth. A pregnant officer may request separation from active duty. Requests for separation will not normally be approved unless there are extenuating circumstances or the request otherwise complies with criteria for separation contained in this instruction. CHNAVPERs and DC/S (M&RA) will prescribe the maximum period possible for eligible officers to consider this course of action, in order to minimize subsequent separations for parenthood or dependency and provide prompt replacement of separated personnel. The chain of command shall ensure that service members will be afforded the opportunity to take advantage of available legal assistance for advice regarding their options in establishing paternity.

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(3) Conscientious Objection. An officer shall be separated if authorized under DOD Directive 1300.6, "Conscientious Objectors," of 20 August 1971 (NOTAL).

(4) Surviving Family Member. An officer shall be separated if authorized under DOD Directive 1315.15, "Special Separation Policies for Survivorship," of 26 September 1988 (NOTAL).

(5) Separation of Aliens. An officer who is an alien, an individual who is neither a natural born nor a naturalized citizen of the United States, may be separated on the basis of being an alien who no longer wishes to serve.

(a) The request will normally be denied when retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(b) Notwithstanding the limitations in subparagraph 5d(5) (a), a request for separation may be approved when, in the judgment of CHNAVPERs or DC/S (M&RA), the applicant has demonstrated overriding and compelling factors of a personal need which justify separation.

(6) Separation to Accept Public Office. Unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure, an officer who has completed the obligated service referred to in paragraph 5b of this enclosure may be separated for the purpose of performing the duties of the President or Vice President of the United States; a Presidential appointee to a statutory office; a member of either of the legislative bodies of the U.S.; a Governor; any other state official chosen by the voters of the entire state or states; or a judge of courts of record of the U.S., the states, or the District of Columbia.

(7) Officers Married to Other Service Members. Unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure, an officer may be separated who has completed the obligated service, referred to in paragraph 5b, and who cannot be stationed near enough to the spouse to permit the maintenance of a joint residence.

(8) Separation to Attend College. At the discretion of CHNAVPERs or DC/S (M&RA), officers may be separated for the

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purpose of enrolling in a full-time course of study leading to a baccalaureate degree or graduate degree, provided such separation occurs within 90 days of the date of expiration of the obligated service, referred to in paragraph 5b of this enclosure, and retention is not warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

e. Interservice Transfers. CHNAVPERS or DC/S (M&RA) may act upon requests for interservice transfers under the following guidelines, when both the losing and gaining services agree. When the two services disagree, the applications will be submitted to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) with recommendations and supporting rationale.

(1) Interservice Transfers to Another Military Department. An officer may be separated from the service for the purpose of transfer to another military department under SECNAVINST 1000.7D upon expiration of any obligated service, referred to in paragraph 5b of this enclosure, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(2) Interservice transfers within the Department of the Navy. Interservice transfers between the Navy and the Marine Corps may be authorized under SECNAVINST 1000.7D, normally upon expiration of any obligated service, referred to in paragraphs 1c(1) and 5b of this enclosure.

f. Selected Changes in Service Obligations. An officer may be separated under specific programs established by the CNO or CMC permitting separation within 90 days of the date of expiration of active obligated service. Such programs shall have as objectives the maintenance of prudent management flexibility and the conservation of limited resources. An example of such a program is the release of an officer from active duty prior to extended deployment to avoid separation outside the continental United States. The CNO and CMC shall submit to the Secretary, for approval and incorporation into this instruction, the reasons for separation under these programs prior to their implementation. The following reasons for separation are authorized under this paragraph when CHNAVPERS or DC/S (M&RA) determines that such separations are more economical or efficient for the Government:

(1) Separation Upon Completion of Overseas Tours. Officers having less than 90 days of obligated service, referred

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to in paragraph 5b of this enclosure, remaining upon completion of an overseas tour other than Hawaii, may be separated upon completion of that tour, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(2) Separation for Major Federal Holidays. Officers whose obligated service, referred to in paragraph 5b of this enclosure, expires during a Federal holiday program established by the CNO or CMC may be separated at the commencement of that program, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

g. Retirement. An officer may be retired if requested and if eligible and authorized under SECNAVINST 1811.3M or SECNAVINST 1820.2B.

h. Discharge of A Reservist to Become A Minister. An officer who becomes a regular or ordained minister of a religious faith group is entitled, upon his/her request, to be discharged from the Naval or Marine Corps Reserve per section 12682 of reference (a), if the officer satisfactorily establishes that:

(1) He or she will, or does regularly, engage in religious preaching and teaching;

(2) The ministry is, or will be his or her main and primary calling--a vocation rather than an avocation;

(3) His or her standing in the congregation is, or will be, recognized as that of a minister or leader of a group of lesser members; and

(4) His or her religious faith group is organized exclusively or substantially for religious purposes.

i. Failure to Receive Initial Appointment Benefits. Newly appointed officers may be separated at their request or with their consent for failure or inability on the part of the Naval Service to give the benefits promised incident to initial appointment; e.g., service credit or entry grade. The screening for mobilization potential specified in paragraph 12 of enclosure (3) for Reserve component officers is not applicable. Newly appointed officers separated for this reason have not served the statutory service obligation prescribed in DOD Directive 1304.25 of 25 August 1997 (NOTAL).

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j. Expiration of Term of Active Duty Order In The Case of Reservists. Reservists may be released from active duty at the expiration of their term of service specified in their order to active duty.

6. Expungement of Resignations from Officer Service Record

a. CHNAVPERS and DC/S (M&RA) will, upon their approval of an officer's written request to withdraw a resignation, expunge the following from the officer's official record:

(1) For officers on active duty - resignations, disapproved resignations, and related correspondence in its entirety.

(2) For officers who resign and subsequently return to active duty in the Naval Service - portions of resignation correspondence which contain reasons for resignation. Such expungements will include portions from letters of intent to resign and letters of resignation and endorsements.

b. Other resignation-related material such as separation orders, fitness reports, and DD 214, Certificate of Release or Discharge from Active Duty, will not be expunged.

POLICY GOVERNING INVOLUNTARY SEPARATION

1. Separation for Cause. Officers who do not maintain required standards of performance or professional or personal conduct may be disciplined when appropriate and/or may be processed for separation for cause in accordance with this instruction when there is reason to believe that one or more of the following circumstances exist. Nothing in this instruction is intended to preclude trial by court-martial when appropriate.

a. Substandard Performance of Duty. Inability of an officer to maintain adequate levels of performance or conduct as evidenced by one or more of the following reasons:

(1) Failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade.

(2) Failure to achieve or maintain acceptable standards of proficiency required of an officer in the member's grade.

(3) Failure to properly discharge duties expected of officers of the member's grade and experience.

(4) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer has been ordered to undergo.

(5) A record of marginal service over an extended time as reflected in fitness reports covering two or more positions and signed by at least two reporting seniors.

(6) Personality disorders, when such disorders interfere with the officer's performance of duty and have been diagnosed by a physician or clinical psychologist in accordance with the Section on Mental Disorders, International Classification of Diseases and Injuries-9 (ICD-9), Diagnostic and Statistical Manual (DSM-IV) of Mental Disorders, and NAVMED P117 "Manual of the Medical Department."

(7) An officer who has been referred to a program of rehabilitation for personal abuse of drugs may be separated for failure, through inability or refusal, to participate in or

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successfully complete such a program. Nothing in this provision precludes separation of an officer who has been referred to such a program under any other provision of this instruction in appropriate cases.

(8) An officer who has been referred to a program of rehabilitation for alcohol abuse may be separated for failure, through inability or refusal, to participate in or successfully complete such a program. Nothing in this provision precludes separation of an officer who has been referred to such program under any other provision of this instruction in appropriate cases.

(9) Failure to conform to prescribed standards of dress, weight, personal appearance, or military deportment.

(10) Unsatisfactory performance of a warrant officer, not amounting to misconduct, or moral or professional dereliction.

b. Misconduct, or Moral or Professional Dereliction. Performance or personal or professional conduct (including unfitness on the part of a warrant officer) which is unbecoming an officer as evidenced by one or more of the following reasons:

(1) Commission of a military or civilian offense which could be punished by confinement of 6 months or more and any other misconduct which would require specific intent for conviction.

(2) Unlawful drug involvement. Processing for separation is mandatory. An officer shall be separated if an approved finding of unlawful drug involvement is made. Exception to mandatory processing or separation may be made on a case-by-case basis by the Secretary when the officer's involvement is limited to personal use of drugs and the officer is judged to have potential for future useful service as an officer and is entered into a formal program of drug rehabilitation under reference (f).

(3) Sexual perversion.

(4) Intentional misrepresentation or omission of material fact in obtaining appointment.

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(5) Fraudulent entry into an Armed Force or the fraudulent procurement of commission or warrant as an officer in an Armed Force.

(6) Intentional misrepresentation or omission of material fact in official written documents or official oral statements.

(7) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer has been ordered to undergo when such failure is willful or the result of gross indifference.

(8) Marginal or unsatisfactory performance of duty over an extended period, as reflected in successive periodic or special fitness reports, when such performance is willful or the result of gross indifference.

(9) Intentional mismanagement or discreditable management of personal affairs, including financial affairs.

(10) Misconduct or dereliction resulting in loss of professional status including withdrawal, suspension, or abandonment of license, endorsement, certification, or clinical medical privileges necessary to perform military duties in the officer's competitive category or Marine Corps Occupational Field. When the loss of professional qualification results solely from the removal of the ecclesiastical endorsement, processing under paragraph 2 of this enclosure is required.

(11) A pattern of discreditable involvement with military or civilian authorities, notwithstanding the fact that such misconduct has not resulted in judicial or nonjudicial punishment under the UCMJ.

(12) Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty, which, if service connected, would amount to an offense under the UCMJ.

(13) One or more substantiated incidents of serious misconduct resulting from the officer's active participation in extremist or supremacist activities which, in the independent judgment of the convening authority, is more likely than not to



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undermine unit cohesion or be detrimental to the good order, discipline, or mission accomplishment of the command or unit. Such misconduct must relate to: (1) illegal discrimination based on race, creed, color, sex, religion, or national origin; or (2) advocating the use of force or violence against any Federal, state, or local Government, or any unit or agency thereof, in contravention of Federal, State, or local laws.

(14) An officer who has been referred to a program of rehabilitation, education and counseling for sex offenders may be separated for failure, through inability or refusal, to participate in such a program. Nothing in this provision precludes separation of an officer who has been referred to such a program under any other provision of this instruction in appropriate cases. An officer shall be separated under this provision if the following approved findings are made: A service member who has admitted to the offense(s), or whose case has been substantiated, or who has been found to have committed the offense(s) at nonjudicial punishment (NJP), or who has been found guilty at a criminal trial and thereafter refuses to cooperate with or complete rehabilitation, education, and counseling programs, or who does not cease his/her abusive behaviors.

c. Homosexual Conduct

(1) Homosexual conduct is grounds for separation from the Naval Service. Homosexual conduct includes homosexual acts, a statement by a service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted homosexual marriage. A statement by a service member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects a member's sexual orientation, but because the statement indicates a likelihood the service member engages in or will engage in homosexual acts. A service member's sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct under the terms set forth in subparagraphs (a) through (c). Commanders are to report homosexual conduct to CNPC (NPC-834) or CMC (Code JAM), as appropriate. The Show Cause Authority (SCA) and a BOI shall recommend an officer for separation if one or more of the following approved findings is made:

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(a) The officer has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are further approved findings the officer has demonstrated:

1. Such acts are a departure from the officer's usual and customary behavior; and

2. Such acts, under all the circumstances, are unlikely to recur; and

3. Such acts were not accomplished by use of force, coercion, or intimidation; and

4. Under the particular circumstances of the case, the officer's continued presence in the Naval Service is consistent with the interest of the Naval Service in proper discipline, good order, and morale of the service; and

5. The officer does not have a propensity or intent to engage in homosexual acts.

(b) The officer has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the officer has demonstrated he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by an officer that he or she is homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the officer engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The officer shall be advised of the presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts. It indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether an officer has successfully rebutted the presumption that he or she engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, some or all of the following may be considered (this list is not exhaustive):

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acts;                   1. Whether the officer has engaged in homosexual

2. The officer's credibility;

3. Testimony from others about the officer's  
past conduct, character, and credibility;

4. The nature and circumstances of the officer's  
statement; and

5. Any other evidence relevant to whether the  
officer is likely to engage in homosexual acts.

(c) The officer has married or attempted to marry a  
person known to be of the same sex (as evidenced by the external  
anatomy of the persons involved).

(2) The commissioned officer shall bear the burden of  
proving throughout the proceedings, by a preponderance of the  
evidence, that retention is warranted under the limited  
circumstances described in 1c(1)(a) and 1c(1)(b) of this  
enclosure.

(3) Nothing requires that an officer be processed for  
separation when a determination is made that:

(a) The officer engaged in acts, made statements, or  
married or attempted to marry a person known to be of the same  
biological sex solely for the purposes of avoiding military  
service; and

(b) Separation of the officer would not be in the  
best interest of the Armed Forces.

(4) A commissioned officer may be considered for  
separation under all reasons for which minimum criteria are met;  
however, separate findings under each reason are required. No  
officer shall be retained without the approval of SECNAV when an  
approved finding of homosexual conduct is made. The Secretary is  
the separation authority in all cases.

d. Retention is not Consistent with the Interest of National  
Security. An officer (except a retired officer) may be separated

from the Naval Service when it is determined that the officer's retention is clearly inconsistent with the interests of national security. This provision applies when a determination has been made under the provisions of reference (g) that administrative separation is appropriate. An officer considered for separation under the provisions of reference (g) will be afforded all the rights provided in enclosure (8) of this instruction.

e. Separation in Lieu of Trial by Court-Martial

(1) Basis. An officer may be separated in lieu of trial by court-martial upon the officer's request if charges have been preferred with respect to an offense for which a punitive discharge is authorized. This provision may not be used when Rule for Courts-Martial (R.C.M.) 1003(d) of the Manual for Courts-Martial provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial authorized to adjudge a punitive discharge.

(2) Characterization of Service. Under Other Than Honorable Conditions, but General (Under Honorable Conditions) may be warranted under the guidelines in enclosure (5). Characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Procedures

(a) The request for discharge shall be submitted in writing and signed by the officer.

(b) The officer shall be afforded an opportunity to consult with qualified counsel. If the member refuses to do so, the commanding officer shall prepare a statement to this effect which shall be attached to the file, and the officer shall state that he or she has waived the right to consult with counsel.

(c) Unless the officer has waived the right to counsel, the request shall also be signed by counsel.

(d) In the written request, the officer shall state that he or she understands the following:

1. The elements of the offense or offenses charged;

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2. That characterization of service under Other Than Honorable Conditions is authorized; and

3. The adverse nature of such a characterization and possible consequences.

(e) The request shall also include:

1. An acknowledgment of guilt of one or more of the offenses charged, or of any lesser included offense, for which a punitive discharge is authorized; and

2. A summary of the evidence or list of documents (or copies thereof) provided to the officer pertaining to the offenses for which a punitive discharge is authorized.

(f) Statements by the officer or the officer's counsel submitted in connection with a request under this subsection are not admissible against the member in a court-martial except as provided by Military Rule of Evidence 410, Manual for Courts-Martial.

f. Multiple Reasons. An officer shall be processed for separation for all of the aforementioned reasons which are applicable.

2. Removal of Ecclesiastical Endorsement. Officers in the Chaplain Corps who can no longer continue professional service as a chaplain because an ecclesiastical endorsing agency has withdrawn its endorsement shall be processed for separation in accordance with reference (h) and this instruction using the notification procedure contained in reference (h). Processing solely under this paragraph is not authorized when there is reason to process for separation for cause under any other provision of this instruction, except when authorized by the Secretary in unusual circumstances based upon a recommendation by CHNAVPERS.

3. Failure of Selection for Promotion. It is Department of the Navy policy to retain competent and effective officers who satisfy the authorized strength needs, by grade, competitive category, or special skills authorized by CNO or CMC. However, some officers, who may be less qualified to fill skill needs, must be terminated by reason of failure of selection for

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promotion, by reason of involuntary separation, or retirement for years of service. In execution of this policy, officers may be separated or released from active duty for reason of failure of selection, involuntary separation, and/or years of service as follows:

a. Regular officers above the grade of CWO-5

(1) Regular O-2s, other than LDOs, who twice fail of selection for and who are not on a list of officers recommended for promotion to O-3 shall be Honorably discharged in accordance with section 631 of reference (a) on the date requested by the officer and approved by SECNAV, but not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved.

(2) Regular O-3s and O-4s, other than LDOs, who twice fail of selection for and who are not on a list of officers recommended for promotion to the next higher grade shall be Honorably discharged in accordance with section 632 of reference (a), unless selectively continued to meet requirements in his or her competitive category and grade in accordance with section 637(a) of reference (a), on the date requested by the officer and approved by SECNAV, but not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board which considered the officer for the second time is approved, except as provided in (3).

(3) Exceptions concerning discharge under paragraphs (1) and (2) above:

(a) A female officer appointed under former section 5590 of reference (a) who before 15 September 1981 had not twice failed of selection for promotion to the next higher grade and is not selected for promotion to a higher grade on or after 15 September 1981 may not be discharged earlier than such officer would have been discharged had reference (i) not been enacted.

(b) A female officer appointed under former section 5590 of reference (a) before 15 September 1981 or a Nurse Corps officer who:

1. Was serving in the grade of O-3 on 15 September 1981; and who

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2. Would have been discharged under former section 6396(c) or former section 6401 of reference (a) on 30 June of the fiscal year in which that officer was not on a promotion list and had completed 13 years of active commissioned service; and who

3. Is subject to discharge under section 632 of reference (a) because such officer had twice failed of selection for promotion shall, if such officer has not completed 13 years of active commissioned service at the time otherwise prescribed for the discharge of such officer under such section and such officer so requests, not be discharged until 30 June of the fiscal year in which the officer completes 13 years of active commissioned service.

(c) A female officer appointed under former section 5590 of reference (a) before 15 September 1981 or a Nurse Corps officer who:

1. Was serving in the grade of O-2 on 15 September 1981; and who

2. Would have been discharged under former section 6396(d) or former section 6402 of reference (a) on 30 June of the fiscal year in which that officer was not on a promotion list and had completed 7 years of active commissioned service; and who

3. Is subject to discharge under section 631 of reference (a) because the officer had twice failed of selection for promotion -- shall not be discharged until 30 June of the fiscal year in which the officer completes 7 years of active commissioned service if the officer has not completed 7 years of active commissioned service at the time otherwise prescribed for the discharge under specified section and the officer so requests.

(d) Per DOD Directive 1320.8, "Continuation of Regular Commissioned Officers on Active Duty and Reserve Commissioned Officers on the Reserve Active Status List" 21 October 1996 (NOTAL), Regular officers serving in the grade of O-4 who are subject to discharge under section 632(a) of reference (a) shall normally be selected for continuation by selective continuation boards if the officer will qualify for

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retirement under section 6323 of reference (a) within 6 years of the date of such continuation, unless the officer is being processed for separation for cause.

(4) A Regular O-5, unless selectively continued to meet requirements in his or her competitive category and grade per section 637(b) of reference (a) shall, if not on a promotion list to O-6, be involuntarily retired on the 1<sup>st</sup> day of the month after the month in which he or she completes 28 years of active commissioned service per section 633 of reference (a). However, O-5s who are not on a promotion list may be subject to selective early retirement after two failures of selection to O-6 in accordance with section 638 of reference (a), unless they have been approved for voluntary retirement, or they are to be involuntarily retired under any provision of law, during the fiscal year in which the selection board is convened or during the following fiscal year.

(5) A Regular O-6, unless selectively continued to meet requirements in his or her competitive category and grade in accordance with section 637(b) of reference (a), shall, if not on a promotion list to O-7 or retired earlier, be involuntarily retired on the 1<sup>st</sup> day of the month after the month in which he or she completes 30 years of active commissioned service in accordance with section 634 of reference (a). However, O-6s who are not on a promotion list may be subject to selective early retirement (SER) after 4 years in grade in accordance with section 638 of reference (a) unless they have been approved for voluntary retirement in the fiscal year in which the SER board convenes, or they are to be involuntarily retired under any provision of law, during the fiscal year in which the SER board is convened or during the following fiscal year.

(6) Unless continued under section 637(b) of reference (a), a Regular officer serving in the grade of O-7 who is not on a promotion list to O-8 shall, if not retired earlier, be retired on the 1<sup>st</sup> day of the 1<sup>st</sup> month beginning after the date of the 5<sup>th</sup> anniversary of his or her appointment to that grade or on the 1<sup>st</sup> day of the month after the month in which he or she completes 30 years of active commissioned service, whichever is later, in accordance with section 635 of reference (a). Such officer is, however, subject to selective early retirement under the provisions of section 638 of reference (a) if he or she has served at least 3½ years of active



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duty in the O-7 grade and is not on a list for promotion to O-8, unless they have been approved for voluntary retirement, or they are to be involuntarily retired under any provision of law, during the fiscal year in which the selection board is convened or during the following fiscal year.

(7) Unless continued under section 637(b) of reference (a), a Regular officer serving in the grade O-8 shall, if not retired earlier, be retired on the 1<sup>st</sup> day of the 1<sup>st</sup> month beginning after the date of the 5<sup>th</sup> anniversary of his or her appointment to that grade or on the 1<sup>st</sup> day of the month after the month in which he or she completes 35 years of active commissioned service, whichever is later, in accordance with section 636 of reference (a). Such officer is, however, subject to selective early retirement under the provisions of section 638 of reference (a) if he or she has served at least 3½ years of active duty in the grade of O-8, unless he or she has been approved for voluntary retirement, or he or she is to be involuntarily retired under any provision of law, during the fiscal year in which the selection board is convened or during the following fiscal year.

(8) Regular officers, other than warrant officers and LDOs, serving in the grades of O-4 through O-6 on 15 September 1981, or who were on a promotion list to such grades on that day, shall be retired on the date provided under the laws in effect on 14 September 1981, unless promoted or continued after that date under the provisions of reference (i).

(9) A deferral of retirement or separation and continuation on active duty shall be for a period not to exceed 5 years, but shall not extend beyond the date of the officer's 62<sup>nd</sup> birthday. However, in the case of officers serving in a grade above O-8, CNO or CMC may recommend to the Secretary that he request the President to defer the retirement until the 1<sup>st</sup> day of the month following the month in which the officer becomes 64 years of age. No more than 10 deferments to age 64, for all the armed forces, may be in effect at any one time to meet unusual requirements of the service.

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(10) In the case of an officer serving as a chaplain, the Secretary may defer retirement as required in the best interests of the Navy. Officers serving as Chief or Deputy Chief of Chaplains may, upon approval of the Secretary, have their retirement deferred. Such deferment may not extend beyond the first day of the month following the month in which the officer reaches 68 years of age.

(11) Notwithstanding any other section of this paragraph (failure of selection), an officer who is within 2 years of qualifying for retirement under section 6323 of reference (a) on the date on which he or she is to be discharged shall be retained on active duty until qualified for retirement under that section of law unless sooner discharged or retired for cause under the provisions of this instruction.

b. Reserve officers above the grade of CWO-5

(1) Naval Reserve officers on the active-duty list

(a) In the grades of O-2 or O-3: who twice fail of selection for promotion to a higher grade while on the active-duty list shall be involuntarily released from active duty and placed on the Reserve Active-Status List no later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the report of the selection board which considered the officer for the second time is approved. However, officers subject to separation under this paragraph may be selectively retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 15 of this enclosure, based on a need for that officer's specific skills and unique qualifications.

(b) In the grade of O-4: who twice fail of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the Retired Reserve or if not so transferred, such officers shall be involuntarily released from active duty no later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the report of the selection board which considered the officer for the second time is approved, unless the officer is retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 15 of this enclosure, based on a need for that officer's specific skills and unique qualifications, or in accordance with section 12646 or section 12686 of reference (a).

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(c) In the grade of O-5: who twice fail of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the Retired Reserve. If not so transferred, such officers shall be involuntarily released from active duty no later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the report of the selection board which considered the officer for the second time is approved, unless the officer is retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 15 of this enclosure, based on a need for that officer's specific skills and unique qualifications, or in accordance with section 12646 or section 12686 of reference (a).

(d) In the grade of O-6: shall be given an opportunity to request transfer to the Retired Reserve if qualified, or will be involuntarily released from active duty at the end of their current obligation unless the officer is retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 15 of this enclosure, based on a need for that officer's specific skills and unique qualifications. Such officers not qualified to transfer to the Retired Reserve will be involuntarily released from active duty and placed on the Reserve Active-Status List and, if not sooner selected for promotion to the next higher paygrade, discharged on the 1<sup>st</sup> day of the month following the month in which the officers complete 30 years total commissioned service in accordance with section 14706 of reference (a), unless retained in an active status under sections 12646 or 12686, or continued in an active status under section 14701 thereof.

(2) Marine Corps Reserve officers on active duty: in the grades of O-2 and O-3, who twice fail of selection for promotion to the next higher grade, shall be Honorably discharged no later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month after the month in which the report of the selection board that considered them for the second time is approved. Officers separating under this guidance who are authorized full payment of nondisability separation pay will enter into a written agreement to serve in the Ready Reserve for a period of not less than 3 years following separation from active duty.

(3) Marine Corps officers on active duty designated for the Active Reserve (AR) program:

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(a) In the grade of O-2: who twice fail of selection for promotion to a higher grade and whose names are not on a list of officers recommended for promotion to the next higher grade shall be honorably discharged not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the report of the selection board that considered the officer for the second time is approved. If an officer subject to discharge under this paragraph has not completed 8 years commissioned service, he or she shall be released from active duty and retained in an active status in the Reserve component until the completion of 8 years in a commissioned status.

(b) In the grade of O-3: who twice fail of selection for promotion to a higher grade and whose names are not on a list of officers recommended for promotion to the next higher grade shall be involuntarily released from active duty no later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the report of the selection board that considered the officer for the second time is approved.

(c) In the grade of O-4: career-designated officers who twice fail of selection for promotion to a higher grade, if not on a promotion list to a higher grade, shall, if not earlier removed from the Reserve Active-Status List, be involuntarily released from active duty no later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved. Release will be deferred, if necessary, to enable the officer to become eligible for an active service retirement with pay, consistent with the service limitations established by section 14506 of reference (a). Under no circumstances will the officer be retained beyond the 1<sup>st</sup> day of the month following the month in which the officer completes 20 years of active federal service, at which time he or she shall be given an opportunity to request transfer to the Retired Reserve or to be honorably discharged.

(d) In the grade of O-5: career-designated officers who twice fail of selection for promotion to a higher grade, if not on a promotion list to a higher grade, shall, if not earlier removed from the Reserve Active-Status List, be involuntarily released from active duty. Release will occur not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board that considered the

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officer for the second time is approved. Release will be deferred, if necessary, to enable the officer to become eligible for an active service retirement, but not later than the first day of the month following the month in which the officer completes 28 years total commissioned service, (unless the officer is chosen for release from active duty by a Selective Early Release from Active Duty (SERAD) Board) at which time he or she shall be given an opportunity to request transfer to the Retired Reserve, if qualified, or be honorably discharged, as required by section 14507 of reference (a).

(e) In the grade of O-6: a career-designated AR colonel may only serve on active duty until completing 30 years total commissioned service (unless the officer is chosen for release from active duty by a SERAD Board) at which time he or she shall be given an opportunity to request transfer to the Retired Reserve, if qualified, or be honorably discharged, as required by section 14507 of reference (a).

(4) Naval Reserve Full-Time Support officers on active duty, but not on the active duty list. This category includes Training and Administration of the Reserve (TAR) officers, Naval Reserve Canvasser Recruiter (CANREC) officers, and temporary recall (Three Year Recall/One Year Recall/Active Duty for Special Work) officers:

(a) In the grade of O-1: who have been found not qualified for promotion to a higher grade shall be involuntarily released from active duty and eliminated from an active status at any time after being found not qualified for promotion in accordance with section 14503 of reference (a).

(b) In the grade of O-2: who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty and eliminated from an active status not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board which considered the officer for the second time is approved in accordance with sections 14504 and 14513 of reference (a), unless specifically retained on active duty under sections 12686 or 14504(b) thereof. If an officer subject to release from active duty and elimination from an active status under this subparagraph has not completed the required minimum commissioned service per section 651 of

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reference (a), he or she shall be released from active duty and retained in an active status until the completion of required service in accordance with section 12645 of reference (a).

(c) In the grade of O-3: who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty and eliminated from an active status not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved in accordance with sections 14505 and 14513 of reference (a), unless specifically selected for continuation on the Reserve Active-Status List under section 14701 of reference (a) or retained on active duty under section 12646 or 12686 of reference (a).

(d) In the grade of O-4: who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty. Release from active duty will occur not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved. TAR officers will be retained on active duty, if necessary, to enable the officer to become eligible for retirement with pay. Retention of TAR officers on active duty may not extend beyond the 1<sup>st</sup> day of the month following the month in which the officer first becomes eligible for retirement with pay (including early retirement). In no case shall retention of TAR O-4s on active duty extend beyond the 1<sup>st</sup> day of the month following the month in which the officer completes 20 years of commissioned service, unless the officer is selected for continuation on the Reserve Active-Status List under section 14701 of reference (a) or retained on active duty under section 12646 or section 12686 of reference (a).

(e) In the grade of O-5: who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty. Release from active duty will occur not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved. TAR officers will be retained on active duty, if necessary, to enable the officer to become eligible for retirement with pay. Retention of TAR officers on

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active duty may not extend beyond the 1<sup>st</sup> day of the month following the month in which the officer first becomes eligible for retirement with pay (including early retirement). In no case shall retention of TAR O-5s on active duty extend beyond the 1<sup>st</sup> day of the month following the month in which the officer completes 28 years of commissioned service, unless the officer is selected for continuation on the Reserve Active-Status List under section 14701 of reference (a) or retained on active duty under section 12646 or section 12686 of reference (a).

(f) In the grade of O-6: who are on active duty and whose names are not on a list of officers recommended for promotion to the next higher grade shall be involuntarily released from active duty upon completion of 30 years of commissioned service not later than the 1<sup>st</sup> day of the month following the month in which they complete that service, in accordance with sections 14507, 14514 and 14706 of reference (a), unless continued on the Reserve Active-Status List under section 14701 of reference (a) or retained on active duty under section 12646 or section 12686 of reference (a).

(5) Naval and Marine Corps Reserve (not on active duty); elimination from an active status:

(a) Subject to the completion of obligated service under section 651 of reference (a), a Reserve officer serving in the grade of O-2 in an active status who twice fails of selection to the next higher grade and whose name is not on a list of officers recommended for promotion shall be eliminated from an active status not later than the 1<sup>st</sup> day of the 7<sup>th</sup> month after the month in which the report of the selection board that considered the officer for the second time is approved in accordance with sections 6389, 14504 and 14513 of reference (a), unless retained under sections 12646 or 12686 or 14504(b)(1). Naval and Marine Corps Reserve officers will be retained in an active status until the completion of their military service obligation as established under section 651 of reference (a).

(b) A Reserve officer in an active status serving in the grade of O-3 who twice fails of selection for promotion to the next higher grade and whose name is not on a list of officers recommended for promotion shall be eliminated from an active status not later than the 1<sup>st</sup> day of the 7<sup>th</sup> month after the month in which the report of the selection board that considered the

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officer for the second time is approved in accordance with sections 14505 and 14513 of reference (a), unless retained under section 12646 or 12686 or continued in an active status in accordance with section 14701 of reference (a).

(c) A Reserve officer in an active status serving in the grade of O-4 who twice fails of selection for promotion to the next higher grade and whose name is not on a list of officers recommended for promotion shall be eliminated from an active status on the 1<sup>st</sup> day of the month after the month in which the officer completes 20 years of total commissioned service in accordance with sections 14506, 14513 and 14706 of reference (a), unless retained under section 12646 or 12686 or continued in an active status under section 14701 of reference (a).

(d) A Reserve officer serving in the grades of O-5 or O-6 in an active status whose name is not on a list of officers recommended for promotion to the next higher grade shall be eliminated from an active status (if not earlier removed from the Reserve Active-Status List) upon completion of 28 or 30 years of commissioned service, respectively, not later than the 1<sup>st</sup> day of the month after the month in which the officer completes such service, in accordance with sections 14507, 14514 and 14706 of reference (a), unless retained under section 12646, 12686, or 14703 or continued in an active status under section 14701 or 14703 of reference (a).

(e) Each officer of the Naval or Marine Corps Reserve in an active status in the permanent grade of O-7, shall, 30 days after he or she completes 30 years of total commissioned service computed under section 14706 of reference (a) or on the 5<sup>th</sup> anniversary of the date of his or her appointment to that grade, whichever is later, be transferred to the Retired Reserve, if qualified and applies therefor, or discharged from the Naval or Marine Corps Reserve if not qualified or does not apply for such transfer, under sections 14508(a) and 14514 of reference (a). An officer who has been recommended for promotion and who would otherwise be removed from an active status under this paragraph shall be retained in that status until he or she has been appointed or has refused appointment to the permanent grade of O-8.



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(f) Each officer of the Naval or Marine Corps Reserve in an active status in the permanent grade of O-8 shall, 30 days after he or she completes 35 years of total commissioned service computed under section 14706 of reference (a) or on the 5<sup>th</sup> anniversary of the date of his or her appointment to that grade, whichever is later, be transferred to the Retired Reserve, if qualified and applies therefor, or discharged from the Naval or Marine Corps Reserve, if not qualified or does not apply for such transfer, under sections 14508(b) and 14514 of reference (a).

(g) Notwithstanding paragraphs 3b(5)(a) through (f) above, officers appointed before 1 October 1996 who are described in former sections 6397 or 6403 of reference (a), relating to Nurse Corps officers and women officers, are entitled to be treated as they would have been treated under those sections as in effect before 1 October 1996, if that treatment would result in the date for the officers' separation from an active status being a later date than the date established under the law in effect on or after 1 October 1996. Accordingly, under the transition provisions of the Reserve Officer Personnel Management Act, such officers may be removed from an active status under conditions prescribed in chapters 36 and 573 of reference (a). These chapters detail the conditions for the separation, retirement, or discharge of Regular officers of the same grade on the active-duty list of the Navy. In addition, an officer may be eliminated from an active status under these provisions only upon the recommendation of a board convened by SECNAV.

(6) Notwithstanding any other provision in this paragraph, the following provisions of sections 12646 and 12686 of reference (a) are applicable to Reserve officers in an active status:

(a) A Reserve officer who is entitled to be credited with at least 18 but less than 19 years of service computed under section 12732 of reference (a) on the date prescribed for discharge or transfer from an active status, may not be discharged or transferred from an active status without his or her consent before the earlier of the following dates:

1. The date on which he or she is entitled to be credited with 20 years of service computed under section 12732 of reference (a); or

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2. The 3<sup>rd</sup> anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

(b) A Reserve officer who is entitled to be credited with at least 19, but less than 20 years of service computed under section 12732 of reference (a) on the date prescribed for discharge or transfer from an active status may not be discharged or transferred from an active status without his or her consent before the earlier of the following dates:

1. The date on which he or she is entitled to be credited with 20 years of service, computed under section 12732 of reference (a); or

2. The second anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

(c) A Reserve officer on active duty (other than for training) who is within 2 years of qualifying for retirement under section 6323 of reference (a) on the date on which he or she would otherwise be removed from an active status, shall not be involuntarily released from active duty before qualifying for retirement under that section, unless the officer reaches an age at which transfer from an active status or discharge is required under paragraph 11 of this enclosure. An officer who is retained on active duty under this provision may not be removed from an active status while he or she is on that active duty, except when separated for cause.

(d) Under section 12686 of reference (a), a Reserve officer who is on active duty and is within 2 years of becoming eligible for retired pay under a purely military retirement system, may not be involuntarily released from that duty before he or she becomes eligible for that pay, except when separated for cause, or when eligible for retired pay under section 12731 of reference (a).

(e) Per section 14513 of reference (a), normal separation of Reserve officers in an active status who are not on active duty shall be via either transfer to the Retired Reserve, if such officers are eligible and so request, or discharge. Transfer to the inactive status list shall only be used when

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CHNAVPERS or CMC makes a finding that the officer has a specific skill which cannot be met by the active and reserve forces in time of mobilization.

c. LDOs

(1) Permanent LDOs. The separation and retirement of Regular permanent LDOs are governed by section 6383 of reference (a).

(a) Unless selectively continued to meet requirements of his or her competitive category and grade per procedures under references (j) or (k), each Regular permanent LDO below O-5 in the Navy and each Regular permanent LDO in the Marine Corps shall be retired on the last day of the month following the month in which he or she completes 30 years of active Naval Service, exclusive of active duty for training in a Reserve component. Under no circumstances may an LDO officer remain on active duty beyond age 62.

(b) Each permanent LDO serving in the grade of O-3 or O-4 who has twice failed of selection for promotion to the next higher grade and is not on a promotion list to a higher grade shall be retired, if eligible to retire, or Honorably discharged on the date requested by the officer and approved by SECNAV, but not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the President approves the report of the board in which the officer failed of selection for the second time. A permanent LDO serving in the grade of O-3, who twice fails of selection to O-4, or an O-4 who twice fails of selection to O-5, may be selectively continued on active duty upon the recommendation of a selection board convened by SECNAV until the completion of 20 years of active service.

(c) Unless continued by a selection board convened by SECNAV, a Regular permanent LDO in the grade of commander in the Navy who has twice failed of selection for promotion to the grade of captain, and is not on a list of officers recommended for promotion to the grade of captain shall, if eligible for retirement as a commissioned officer, be retired on the date requested by the officer and approved by SECNAV but not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the President approves the report of the board in which the officer is considered as having failed of selection for the second time. If the officer is not eligible for retirement as a commissioned officer, he or she shall be retired not later

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than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the officer becomes eligible for retirement as a commissioned officer.

(2) Temporary LDOs

(a) The appointments of temporary LDOs who are not selectively continued on active duty under reference (j) or (k) are terminated on the earlier of the following dates: (1) the last day of the month following the month in which the officer completes 30 years of active Naval Service, other than active duty for training or (2) a date requested by the officer, and approved by the Secretary, providing that the requested retirement date does not exceed the required statutory retirement date resulting from the second failure to select for promotion in accordance with reference (j).

1. A temporary LDO with a permanent Regular warrant officer status whose LDO appointment is terminated will be afforded the option of voluntary retirement in lieu of reversion to permanent warrant officer status. A temporary LDO who reverts to a permanent warrant officer status is subject to involuntary retirement or Honorable discharge as a warrant officer under applicable statutes and as provided for under paragraph 3d of this enclosure.

2. A temporary LDO with a permanent Regular enlisted status whose appointment is so terminated will be afforded the option of voluntary retirement in lieu of reversion to permanent enlisted status and where applicable, Honorable discharge by reason of expiration of enlistment.

(b) A temporary LDO who is not eligible for retirement under section 6323 of reference (a) and who has twice failed of selection to the next higher temporary grade, may either be retained on active duty in the temporary grade held if within 2 years of retirement eligibility, per enclosure (2) of reference (j), as of 30 June of the fiscal year in which the second failure of selection occurs, or may be reverted to permanent warrant officer or enlisted status if not within 2 years of attaining retirement eligibility.

d. Permanent Regular Warrant Officers

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(1) Unless selectively continued on active duty in the Navy under reference (j), or in the Marine Corps under reference (k), a permanent Regular warrant officer who has at least 30 years of active service shall be retired on the 1<sup>st</sup> day of the 1<sup>st</sup> month beginning after a period of 60 days has run from the date that he or she completes that service.

(2) Unless retired or separated sooner under some other provision of this instruction, a permanent Regular warrant officer who has twice failed of selection for promotion to the next higher permanent Regular warrant officer grade shall:

(a) If he or she has more than 20 years of active service on (1) the date when SECNAV approves the report of the board under section 576(e) of reference (a); or (2) the date when his or her name was removed from a promotion list under section 579 of reference (a), whichever applies, be retired not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the applicable date above.

(b) If he or she has at least 18 but not more than 20 years of active service on (1) the date when SECNAV approves the report of the board under section 576(e) of reference (a); or (2) the date when his or her name was removed from a promotion list under section 579 of reference (a), whichever applies, be retired not later than the date determined under the next sentence unless he or she is selected for promotion to the next higher Regular warrant officer grade before that date. The date of retirement of a warrant officer under the preceding sentence shall be on a date specified by SECNAV, but not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the date upon which he or she completes 20 years of active service.

(c) If he or she has less than 18 years of active service on (1) the date when SECNAV approves the report of the board under section 576(e) of reference (a) or (2) the date when his or her name was removed from a promotion list under section 579 of reference (a), whichever applies, be Honorably discharged from the Regular Navy or Marine Corps not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the applicable date.

(d) Notwithstanding paragraph 3d(2)(c), immediately above, if on the date on which a warrant officer is to be separated under that paragraph the warrant officer has at least

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18 years of active service, he or she shall be retained on active duty until retired under paragraph 3d(2)(b) in the same manner as if the warrant officer had had at least 18 years of service on the applicable date under paragraph 3d(2)(b).

(3) Notwithstanding paragraph 3d(2)(c), a permanent Regular warrant officer with less than 18 years of active service creditable toward retirement who is subject to discharge as a result of having twice failed of selection to the next higher permanent Regular warrant officer grade, and who holds a temporary appointment in a grade above CW05, shall continue serving on active duty until qualified for retirement under reference (a).

(4) Notwithstanding paragraph 3d(2)(c), a permanent Regular warrant officer with less than 18 years of active service creditable toward retirement who is subject to discharge as a result of having twice failed of selection to the next higher permanent Regular warrant officer grade, may request enlistment and, in the discretion of SECNAV, be enlisted in a grade prescribed by the Secretary, but not in a grade lower than that held immediately before original appointment as a warrant officer. In making recommendations to SECNAV, CHNAVPERS and CMC shall consider the individual's record of service as a warrant officer, the length of service performed as a warrant officer, and the relationship of inventory to approved authorizations in the Navy enlisted classification or military occupational specialty in which the individual would serve in an enlisted status.

(5) SECNAV may defer, for not more than 4 months, the retirement or separation of any Regular warrant officer if, because of unavoidable circumstances, evaluation of his or her physical condition and determination of his/her entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which he or she would otherwise be required to be retired or discharged.

e. Permanent Reserve Warrant Officers

(1) A permanent Reserve warrant officer who has at least 30 years of active service, other than active duty for training, or has completed at least 30 years of service computed

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under section 12732 of reference (a), shall be transferred to the Retired Reserve or the Naval or Marine Corps Reserve Retired List, as appropriate, not later than 6 months after he or she completes that service. A warrant officer of the Naval or Marine Corps Reserve who is subject to separation under this paragraph, may be selectively retained to meet requirements identified for his or her grade, competitive category, and designator in accordance with procedures described in references (k) or (m).

(2) Unless retired or separated under some other provision of this instruction, a Reserve warrant officer (exclusive of CWO4) who has twice failed of selection for promotion to the next higher permanent warrant officer grade, who is not on a promotion list, and who has:

(a) Performed more than 20 years of active service or who has performed at least 20 years of service computed under section 12732 of reference (a) on (1) the date when SECNAV approves the report of the promotion selection board; or (2) the date when his or her name was removed from a promotion list, whichever applies, shall be transferred to the inactive status list, or upon his or her request, to the Retired Reserve or Naval or Marine Corps Reserve retired list, as appropriate.

(b) Performed at least 18 but less than 20 years of service computed under section 12732 of reference (a) on (1) the date when SECNAV approves the report of the promotion selection board, or (2) the date when his or her name was removed from the promotion list, whichever applies, shall not be discharged or transferred from an active status without his or her consent before the earlier of the following dates unless sooner separated for cause under paragraph 1 of this enclosure:

1. The date on which he or she is entitled to be credited with 20 years of service computed under section 12732 of reference (a); or

2. If he or she has at least 19 years of service computed under section 12732 of reference (a), the second anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

3. If he or she has at least 18 but less than 19 years of service computed under section 12732 of reference (a),

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the third anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

(c) Performed less than 18 years of service computed under section 12732 of reference (a) on (1) the date when SECNAV approves the report of the selection board; or (2) the date when his or her name is removed from the promotion list, whichever applies, may request enlistment and in the discretion of SECNAV be enlisted in a grade prescribed by the Secretary, but not in a grade lower than that held immediately before original appointment as a warrant officer. In making recommendations to SECNAV, CHNAVPERS and DC/S (M&RA) shall consider the individual's record of service as a warrant officer, the length of service performed as a warrant officer, and the needs of the Service in the Navy enlisted classification or military occupational specialty in which the individual would serve in an enlisted status.

(d) Not requested transfer to the Naval or Marine Corps Reserve retired list as provided in paragraph 3e(2)(a), is not eligible for retention in an active status as provided in paragraph 3e(2)(b), and does not request enlistment as provided in paragraph 3e(2)(c), or is denied enlistment, shall be Honorably discharged from the Naval or Marine Corps Reserve.

(3) A Reserve warrant officer on active duty (other than active duty for training) who, on the date when he or she would be otherwise discharged or removed from an active status without his or her consent under paragraph 3e(2), is within 2 years of qualifying for retirement under section 6323 of reference (a), shall not be involuntarily released from active duty before qualifying for retirement under that section, unless the officer reaches an age at which transfer from an active status or discharge is required. An officer who is retained on active duty under this paragraph may not be removed from an active status while serving on that active duty.

(4) SECNAV may defer, for not more than 4 months, the retirement or separation of any warrant officer if, because of unavoidable circumstances, evaluation of his or her physical condition and determination of his or her entitlement to retirement or separation for physical disability requires hospitalization or medical observation that cannot be completed before the date when he or she would otherwise be required to be retired or discharged.



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4. Unqualified for Promotion

a. Under section 630 of reference (a), an officer, other than an LDO, serving in the grade of O-1 who is found unqualified for promotion to O-2 shall be honorably discharged at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion. Section 14503 of reference (a) provides for separation of inactive-duty Reserve officers found not qualified for promotion to O-2.

b. Per section 5596 of reference (a) and reference (j), each temporary LDO serving in the grade of O-1 or O-2 who is found not qualified for promotion to the next higher grade may have his or her appointment terminated by SECNAV and be reverted to his or her permanent warrant or enlisted status.

c. Per section 6383(e)(2) of reference (a), an LDO on the active duty list of the Navy, or on the active duty list of the Marine Corps, who is serving in the grade of O-1, who is found not qualified for promotion to the next higher grade, shall be honorably discharged on the date requested by the officer and approved by SECNAV, but not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the officer was found not qualified for promotion.

d. Per section 6383 (e)(1) of reference (a), an LDO on the active duty list of the Navy, or on the active duty list of the Marine Corps, who is serving in the grade of O-2, who is considered as having failed of selection to the next higher grade, shall be honorably discharged on the date requested by the officer and approved by SECNAV, but not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the higher grade for the second time.

e. A Regular officer subject to separation solely under the provisions of paragraphs 4a or b who has not satisfied his or her statutory military obligation, as described in section 651 of reference (a), shall be required to accept an appointment in a Reserve component in an active status.

f. A Reserve officer subject to separation solely under the provisions of paragraph 4a or b who has not satisfied his or her

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statutory military obligation, as described in section 12645 of reference (a), may be so separated without regard to military obligation.

g. The authority to separate an officer under this section shall not be used when separation for cause under the provisions of reference (a) and paragraph 1 of this enclosure is appropriate.

5. Failure to Accept an Appointment to O-2

a. An officer who fails to accept a permanent or temporary appointment to the grade of O-2 shall be processed for an honorable discharge using the notification procedure of enclosure (7).

b. As provided in DoD Instruction 1304.25 of 25 August 1997 (NOTAL), CHNAVPERS or DC/S (M&RA) may not separate an officer under this section until the officer has satisfied the obligated service, referred to in paragraphs 1c(1) and 4a of enclosure (2), except in the case of Reserve officers, who may be separated under section 14503(c) of reference (a) under regulation prescribed by the Secretary of Defense.

6. Parenthood. An officer may be separated by reason of parenthood if it is determined that the officer is unable to perform his or her duties satisfactorily or is unavailable for worldwide assignment or deployment.

7. General Demobilization or Reduction in Authorized Strength. Reserve officers may be released from active duty as a part of a general demobilization or reduction in authorized strength. However, under section 12312 of reference (a), an officer serving on active duty under an active duty agreement executed under section 12311 of reference (a) may not be released from active duty without his or her consent during the period of the agreement because of reduction in actual personnel strength, unless his or her release is recommended by a board of officers (other than that prescribed in enclosure (1)) convened by SECNAV for the purpose of general demobilization or reduction of authorized strength. Specific procedures governing the convening of such boards will be established by the Secretary when a reduction in authorized strength is required.

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8. Release from Active Duty

a. When determined to be in the best interest of the service, SECNAV may, in those cases where no other reason for separation is set forth in this instruction, release a Naval or Marine Corps Reserve officer from active duty, without the requirement for the officer to be heard by a BOI or any other formal board before the release.

b. The following statutory limitations exist regarding the release of Reserve officers from active duty:

(1) Under section 12313(b) of reference (a), a Reserve officer may be released from active duty (other than for training) in time of war or national emergency declared by Congress or the President after January 1, 1953 only upon the recommendation of a BOI approved by CHNAVPERS or DC/S (M&RA), as appropriate, unless the officer waives the board or his or her release is otherwise authorized by law. This subparagraph does not apply to either the Navy or Marine Corps during a period of demobilization or reduction in strength of that service.

(2) Under section 12312 of reference (b), a Reserve officer serving on active duty under an active duty agreement executed under section 12311 of reference (a) may not be involuntarily released from active duty during the period of the agreement because of a reduction in actual personnel strength or for any other reason unless such release is recommended by a BOI as described in enclosure (8), except when he or she is:

(a) Dismissed or discharged under the sentence of a court-martial;

(b) Released because of an unexplained absence without leave for at least 3 months;

(c) Released because of a conviction and sentence to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final; or

(d) Released under paragraph 3 of this enclosure for having twice failed of selection for promotion.

(3) Under section 12686 of reference (a), a Reserve officer who is on active duty (other than for training) and is within 2 years of becoming eligible for retired pay under a purely military retirement system shall not be involuntarily released from that duty before he or she becomes eligible for that pay, unless his or her release is approved by the Secretary.

c. All Marine Corps AR field grade officers (excluding officers within 2 years of becoming eligible for retirement with pay) are subject to release from active duty when selected for early release from active duty by the DC/S (M&RA)-directed Selective Early Release from Active Duty (SERAD) Board per subparagraph d of this paragraph. Non-career-designated AR officers and statutory tour AR officers serving on active duty shall be released from active duty upon expiration of active service, as specified in the active duty agreement under which serving. There are no approved general officer billets in the AR competitive category. An AR colonel who desires to compete for the grade of Reserve O-7 and is otherwise eligible to compete for O-7 except for being a member on the AR program must be released from active duty in the AR program at least 60 days prior to the convening date of the Reserve general officer selection board.

d. When required, DC/S (M&RA) shall convene SERAD Boards, which shall recommend the early release from active duty of Marine Corps AR officers in the grades of major, lieutenant colonel, and colonel. Specific procedures governing the convening of SERAD Boards, including the number of officers in each field grade that will be considered by a particular SERAD Board, will be established by DC/S (M&RA).

(1) Normally, majors and lieutenant colonels shall become SERAD-eligible when they attain 3 years time-in-grade, and colonels shall become SERAD-eligible when they attain 2 years time-in-grade.

(2) Any officer who is selected for early release from active duty as a result of the action of a SERAD Board and who is not on a promotion list will be released from active duty by the end of the fiscal year for which that SERAD Board was convened. If necessary, involuntary release will be deferred to enable the officer to qualify for retirement with pay. Such deferments will end on the earlier of either:

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(a) The 1<sup>st</sup> day of the month following the month in which the officer qualifies for retirement with pay, or

(b) The day on which the officer must be removed from an active status under section 14506 or 14507 of reference (a) (the officer will then be given the opportunity to request transfer to the Retired Reserve or to be honorably discharged).

e. When required, CHNAVPERS shall convene a SERAD Board which shall recommend the early release from active duty of TAR O-5s. CHNAVPERS shall establish numbers for the SERAD board by grouping TAR O-5s by their competitive category and their promotion fiscal year group. The board must review the record of all eligible TAR officers in each competitive category as of the board's convening date. Normally, TAR O-5s shall become SERAD-eligible during the 4<sup>th</sup> fiscal year after their date of rank. TAR O-5s who: are not on a promotion list, have attained 20 or more years of commissioned service as defined in enclosure (1), and are selected by a SERAD board, shall be involuntarily released from active duty by 1 September of the SERAD fiscal year (i.e., the fiscal year in which the SERAD board was convened), or the 1<sup>st</sup> day of the 7<sup>th</sup> month following the month in which the SERAD board's report is approved--whichever is later. TAR O-5 SERAD selectees who would have less than 20 years of commissioned service on 1 September of the SERAD fiscal year, will be released from active duty on the 1<sup>st</sup> day of the month after the month in which they attain 20 years commissioned service. If necessary, an officer selected for SERAD will be retained on active duty to enable the officer to qualify for retirement with pay (including early retirement). Retention of SERAD-select TAR O-5s on active duty may not extend beyond the 1<sup>st</sup> day of the month following the month in which the officer qualifies for retirement with pay (including early retirement). Retention of SERAD-select TAR O-5s on active duty will not extend beyond the 1<sup>st</sup> day of the month following the month in which the officer completes 28 years of commissioned service, unless the officer is selected for continuation on the Reserve Active-Status List under section 14701 of reference (a) or retained on active duty under section 12686 thereof. TAR O-5s considered but not selected by a SERAD board will not be considered again while in the grade of O-5.

f. TAR officers in the grade of O-6, if not on a promotion list to a higher grade, shall be involuntarily released from active duty at the end of 3 years time in grade, unless

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specifically retained by a TAR Captain Selective Retention Board. CHNAVPERS shall convene a TAR Captain Selective Retention Board under the provisions of paragraph 15 of this enclosure whenever required to retain those TAR captains best fitted to meet requirements. Officers initially retained by such a board will be released from active duty not later than the 1<sup>st</sup> day of September of the 5<sup>th</sup> fiscal year following the fiscal year of promotion, unless retained by a second TAR Captain Selective Retention Board until their completion of 30 years of commissioned service. TAR officers subject to involuntary release from active duty under this subparagraph will be retained on active duty, if necessary, to enable the officer to become eligible for retirement with pay under section 6323 of reference (a). In no case shall retention of TAR O-6s on active duty extend beyond the 1<sup>st</sup> day of the month following the month in which the officer completes 30 years of commissioned service, unless the officer is selected for continuation on the Reserve Active-Status List under section 14701 of reference (a).

g. TAR officers above the grade of O-6 will be involuntarily released from active duty on the 1<sup>st</sup> day of the month following the fourth anniversary of the officer's effective date of rank to the grade of O-7.

h. When required, CHNAVPERS shall convene an Involuntary Release from Active Duty (IRAD) Board to control end strength ceilings, grade allowances, or other requirements of the Naval Reserve Canvasser Recruiter (CANREC) program. CANREC officers selected for IRAD shall be involuntarily released from active duty not later than the 1<sup>st</sup> day of the 7<sup>th</sup> calendar month beginning after the month in which the report of the IRAD board was approved, unless the officer is retained on active duty under section 12686 of reference (a). Additionally, CANREC officers may be released from active duty at the end of their specified orders for performance or other reasons as delineated in the CANREC program governing directive.

i. Temporary recall officers not on the active duty list (Three Year Recall/One Year Recall/Active Duty for Special Work) shall be released from active duty not later than the end of their specified orders unless specifically extended by subsequent orders or retained under section 12686 of reference (a).

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9. Selective Early Retirement of Regular Officers in the Grades of O-4 and Above. Under the provisions of sections 638 and 638a of reference (a) and DOD Directive 1332.32, "Selective Early Retirement of Officers on an Active Duty List and the Reserve Active Status List and Selective Early Removal of Officers from the Reserve Active Status List" 30 September 1996 (NOTAL), Regular officers in the grades of O-4 and above may be considered for early retirement by a selection board convened by SECNAV under the provisions of reference (1). The purpose of the selective early retirement provision is to provide a means to manage an officer grade imbalance or strength overage in a competitive category such as may occur during a reduction in force. Selective early retirement shall not be used in cases where separation for cause under the provisions of reference (a) and this instruction is warranted. CHNAVPERS or DC/S (M&RA) shall justify selective early retirement in promotion plans submitted to SECNAV in accordance with reference (1).

10. Selective Early Removal of Reserve Officers from the Reserve Active-Status List. Under the provisions of section 14704 of reference (a), whenever the SECNAV determines that there are too many Reserve officers on the Reserve Active-Status List in any grade and competitive category who have at least 30 years of commissioned service under section 14706 of reference (a) or at least 20 years of service computed under section 12732 of reference (a), such officers may be eliminated from an active status by action of a continuation board which the Secretary may convene under section 14101(b) of reference (a).

11. Age Restrictions for Reserve Officers

a. Age in Grade Restrictions. A Reserve officer who has not been recommended for promotion to O-7 or above and is not a member of the Retired Reserve will be involuntarily separated under section 14515 of reference (a), unless the officer is sooner separated or continued in an active status under another provision of law, as follows: he or she will be transferred to the Retired Reserve, if he or she so requests and is qualified, or if not so qualified, honorably discharged from the Naval or Marine Corps Reserve not later than the last day of the month in which the officer reaches the following maximum ages in grade, established by sections 14509, 14510, and 14511 of reference (a):

Below O-8	-----	60 years
O-8	-----	62 years

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b. Retention Beyond Maximum Age in Grade. Except as provided in sections 12646 or 14511 of reference (a), Reserve officers will not be retained in an active status past the age in grade restrictions outlined in paragraph 11a, except as follows:

(1) Under section 14703 of reference (a), SECNAV may, with the officer's consent, retain in an active status any Reserve officer appointed in the Medical Corps, Dental Corps, Nurse Corps, or Chaplains Corps or appointed in the Medical Service Corps and designated to perform as a veterinarian, optometrist, podiatrist, allied health officer, or biomedical sciences officer. Retention may be authorized as specified in an approved SECNAV retention plan, or individually, if approved by SECNAV upon recommendation of CHNAVPERS or CMC, for whose skills a military requirement exists which cannot be met by a Regular or Reserve officer on active duty under age 60 or a Reserve officer in the Ready Reserve under that age, provided that such officer is not subject to discharge, transfer or release from active duty under sections 14503, 14504, 14505, or 14506 of reference (a). A Reserve officer will not be retained in an active status, or retained on or recalled to active duty in a retired status, solely for the purpose of increasing retired pay or as a reward for long, distinguished service. When service under these limitations is rendered after eligibility for retired pay has been achieved, such service shall be credited to the officer, under section 12308 of reference (a). An officer may not be retained in an active status under this paragraph later than the date on which the officer becomes 67 years of age.

(2) Under section 14512(b) of reference (a), SECNAV may defer the retirement under sections 14510 or 14511 of a Reserve officer in a grade above O-6 and retain the officer in an active status until he or she becomes 64 years of age. An officer so deferred shall be involuntarily separated under section 14515 of reference (a), as described in paragraph 11a of this enclosure, not later than the last day of the month in which the officer reaches the age of 64. Not more than 10 officers may be deferred at any one time, distributed between the Navy Reserve and the Marine Corps Reserve as SECNAV determines.

12. Removal from the Reserve Active-Status List. Under sections 10149 and 10152 of reference (a), Reserve commissioned officers on the Reserve Active-Status List may be removed from that list and transferred to the Inactive Status List by CHNAVPERS or DC/S(M&RA) under the following circumstances:



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a. Officers who have attained eligibility to receive non-Regular retired pay at age 60 per section 12731 of reference (a) and who, during an anniversary year, failed to earn 50 points (including membership points) per DoD Directive 1200.15 of 18 September 1997 - Assignment to and Transfer Between Reserve Categories, Discharge from Reserve Status, Transfer to the Retired Reserve and Notification of Eligibility for Retired Pay (NOTAL).

b. Officers who have completed their military service obligations under section 651 of reference (a) and have earned less than 27 retirement points (including membership points) per anniversary year and for whom no shortage of officers with their skills exists in their competitive categories and grades. However, Reserve officers may not be removed from the Reserve Active Status List for failure to meet this standard if training during the anniversary year is denied by reason of lack of funds or facilities to provide appropriate training or if circumstances of an unusual nature exist which preclude the officer from attaining at least 27 retirement points.

c. Officers who have completed their military service obligations under section 651 of reference (a) and who lack mobilization potential identified per screenings required by section 10149 of reference (a) and DoD Directive 1200.7 of 6 April 1984 - Screening the Ready Reserve (NOTAL).

d. Officers required by law to be separated and who are retirement eligible, but whose retirements have not been completed by the date of required separation. Transfer to the Inactive Status List under this authority is an interim measure and is not to be used in lieu of final separation actions requiring retirement or discharge.

13. Separation of Reserve Officers Not on Active Duty for Lack of Mobilization Potential

a. Under sections 12641, 12642, and 12683 of reference (a), SECNAV shall, when necessary, convene a board to screen Reserve officers not on active duty for their potential and availability for mobilization to active duty. Such screening will include, but is not limited to, officers in the following categories:

(1) The officer has been on the Inactive Status List (Standby Reserve) for at least 1 year.

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(2) The officer has been found by Chief, Bureau of Medicine and Surgery (BUMED) to be not physically qualified for active duty or retention in the Naval or Marine Corps Reserve. Such officers shall be afforded an opportunity for full and fair hearing before a Physical Evaluation Board prior to final action on their cases.

(3) The officer has been found by BUMED to be militarily unfit or unsuitable as a result of a medical finding not constituting physical disability. Such officers are not entitled to a hearing before a Physical Evaluation Board.

(4) An officer who fails to undergo a physical examination as required by current regulations.

(5) An officer who fails to keep the command or activity to which the officer is attached informed of the officer's current mailing address.

(6) The officer fails to respond to or comply with official correspondence within a reasonable period of time.

(7) An officer who declines to accept a permanent appointment to the next higher grade within 6 months of approval of the report of the promotion selection board that recommended the officer for promotion.

(8) Officers who have lost professional qualifications for the designation/MOS held and for whom no other designation/MOS is appropriate.

(9) Officers who fail to mobilize when ordered to do so.

(10) Officers who fail to maintain physical readiness standards.

b. Prior to the convening of a board referred to in this paragraph each officer considered will be notified in accordance with paragraph 2 of enclosure (7) of this instruction.

c. Boards to consider Reserve officers for their mobilization potential may be promotion boards reconvened for that purpose or may be convened separately under such regulations as CHNAVPERS or CMC may prescribe.

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d. CHNAVPERS or CMC, upon recommendation of the Board that an officer referred to in this paragraph should be separated for lack of mobilization potential, shall take the following action:

(1) Transfer the officer to the Inactive Status List if the officer is not qualified or does not request transfer to the Retired Reserve; or,

(2) Recommend to the Secretary that the officer be transferred to the Retired Reserve if the officer is qualified and requests such transfer; or,

(3) Recommend to the Secretary that the officer be Honorably discharged from the Naval or Marine Corps Reserve.

14. Release from Active Duty of Naval Reserve Officers on the Active Duty List by Reason of Retirement Eligibility. Naval Reserve commissioned officers and warrant officers on the active duty list who are eligible to retire with pay under the provisions of any retirement law will be released from active duty with a minimum of 6 months advance notice not later than the 1<sup>st</sup> day of the month following the month in which they become eligible to retire unless:

a. Earlier separation is dictated under any other provisions of this instruction, or

b. They officially request retirement in lieu of release from active duty, or

c. They are retained on active duty through the administrative Retention Board and consent to being so retained, or

d. The conditions described in section 12313(b) of reference (a) pertain. To obtain retirement benefits, officers must officially request and be approved for retirement. Officers eligible to retire under section 12731 of reference (a) and qualified for retired pay who are retained on active duty must have prior approval of the Secretary in order to receive active status credit in accordance with section 12308 of reference (a).

15. Boards authorized by this instruction. Boards that are convened by CHNAVPERS or CMC under this instruction shall be

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convened in accordance with regulations prescribed by CHNAVPERS or CMC as appropriate.

16. Secretarial Authority. Notwithstanding any limitation on separation authority under this instruction, SECNAV may direct the processing of any officer after determining that such processing is in the best interest of the Naval Service.

GUIDELINES ON SEPARATIONS FOR CAUSE

1. Advance Notification. Commanding officers shall report to CHNAVPERS or DC/S (M&RA), as appropriate, all incidents (including information received through any source, e.g., Naval Criminal Investigative Service (NCIS), Naval Inspector General) involving any officer whose performance or conduct is such that processing for separation may be appropriate under this instruction.

2. Processing for Separation. CHNAVPERS or DC/S (M&RA) shall initiate processing for separation under the following circumstances:

a. Cases referred to them under paragraph 1, when considered appropriate under this instruction.

b. When they receive information involving officers whose performance or conduct is such that processing is considered appropriate under this instruction.

c. Every officer on the active duty list above the grade of CWO-5 reported to SECNAV by a selection board under references (k) or (l), whose record indicates that the officer should be required to show cause for retention on active duty because of substandard performance of duty, misconduct, moral or professional dereliction, or because his or her retention is clearly inconsistent with the interests of national security.

d. Every Reserve officer not on the active-duty list above the grade of CWO-5 reported to SECNAV by a selection board under chapters 1403 and 1405 of reference (a) and this instruction whose record indicates that the officer should be separated because of substandard performance of duty, misconduct, moral or professional dereliction, or because his or her retention is clearly inconsistent with the interests of national security.

e. Every warrant officer reported to SECNAV by a selection board under references (j), (k), or (m) whose records and/or reports establish, in the opinion of the board, his or her unfitness or unsatisfactory performance in his or her warrant grade or that his or her retention is clearly inconsistent with the interests of national security.

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3. Probationary and Non-probationary Commissioned Officers

a. Probationary Commissioned Officers

(1) A probationary commissioned officer being considered for separation for one or more of the reasons contained in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation under the notification procedures in enclosure (7). Neither a hearing nor a board proceeding is required. In cases where deemed appropriate, a recommendation may be made to the Secretary by CHNAVPERS or DC/S (M&RA) to separate such a probationary commissioned officer with an Honorable or General characterization of service. This is in addition to the authority to either close a case after initial review, or refer it to a BOI. The Secretary may approve the separation and characterization, or reject the recommendation and direct that the case be referred to a BOI.

(2) Notwithstanding any other provision of this instruction, a probationary commissioned officer may, upon approval of SECNAV, be discharged when there is a need to reduce the number of officers in either the Navy or the Marine Corps to meet budgetary or force size requirements. The provisions of enclosure (7) do not apply to the discharge of probationary commissioned officers under this authority. This authority will be exercised per procedures established by CHNAVPERS and DC/S (M&RA) and submitted for approval to SECNAV prior to implementation.

(3) SECNAV may refer any case which he considers appropriate to a BOI.

b. Non-probationary Commissioned Officers. Non-probationary commissioned officers being considered for separation for one or more of the reasons contained in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation in accordance with the Administrative Board Procedures in enclosure (8).

4. Permanent Reserve Warrant Officers

a. Reserve warrant officers with less than 5 years of service as a warrant officer may be separated from the Naval or Marine Corps Reserve at any time without the benefit of a hearing or board procedure for any reason discussed in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3). The notification procedure contained in enclosure (7) shall be used.

b. Reserve warrant officers, regardless of length of commissioned service or service as a warrant officer, may be separated from the Naval or Marine Corps Reserve at any time without the requirement of a hearing or board procedure for any reason discussed in paragraphs 11 (Age Restrictions) or 13 (Lack of Mobilization Potential) of enclosure (3). The notification procedure contained in enclosure (7) shall be used.

c. Reserve warrant officers with more than 5 years of service as a warrant officer may be separated for any reason discussed in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3) only upon recommendation of a BOI as provided in enclosure (8).

d. Reserve warrant officers who are not eligible for retirement may apply for enlistment in the highest enlisted grade previously held if Honorably discharged because of any reason contained in paragraph 1a (Substandard Performance of Duty) of enclosure (3).

5. LDOs and Warrant Officers with Temporary Promotions or Appointments. As prescribed by section 5596 of reference (a), the Secretary may at any time terminate the temporary promotion or appointment of a LDO or warrant officer of the naval service without the requirement for a hearing or a board of officers. The notification procedure of enclosure (7) shall be used. Accordingly, an individual whose temporary appointment is terminated reverts to his or her permanent status as a warrant officer or enlisted member. The provisions of this instruction apply to the administrative processing of an individual who reverts to warrant officer status. The provisions of SECNAVINST 1910.4B (NOTAL) apply to the administrative processing of an individual who reverts to enlisted status.

6. Permanent Regular Warrant Officers

a. Permanent Regular warrant officers who, from the date when they accepted their original permanent appointments as warrant officers in that component, have not completed 3 years of continuous active service may, under section 1165 of reference (a), have their appointments terminated at any time without the requirement of a hearing or board proceedings. The basis for such termination is contained in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3). For purposes of this instruction, the term "unsatisfactory performance," as provided in sections 576(d) and 1166 of reference (a) is equivalent to substandard performance of duty as defined in enclosure (3) of this instruction. The notification procedure of enclosure (7) shall be used.

b. Permanent Regular warrant officers who have completed 3 or more years of continuous active service from the date when they accepted their original permanent appointments as warrant officers may have their appointments terminated because of any reason contained in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3) only upon recommendation by a BOI as provided in enclosure (8).

c. A permanent Regular warrant officer, who is not eligible for retirement, may apply for enlistment in the highest enlisted grade previously held under section 515 of reference (a) if Honorably discharged because of any reason contained in paragraph 1a (Substandard Performance of Duty) of enclosure (3). A permanent Regular warrant officer with 3 or more years of continuous active service from the date of acceptance of original permanent appointment who is identified by a promotion selection board as being unfit or unsatisfactory in the performance of duty shall be afforded the opportunity to appear before a BOI prior to separation or termination of appointment.

7. Retention to Fulfill Statutory Service Obligation

a. At the discretion of SECNAV, a Regular officer who has not fulfilled the statutory obligation referred to in paragraph 4a of enclosure (2), and who is Honorably discharged from the Regular component by the Secretary for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6



(Parenthood) of enclosure (3), may be tendered a Reserve commission and transferred to the Ready Reserve to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

b. At the discretion of SECNAV, a Reserve officer on active duty or in an active status not on active duty who has not completed the statutory obligation referred to in paragraph 4a of enclosure (2), and who would otherwise be Honorably discharged from the Naval or Marine Corps Reserve by the Secretary for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6 (Parenthood) of enclosure (3), may be released from active duty and transferred to the Ready Reserve or be retained in the Ready Reserve if not on active duty, to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

c. To assist SECNAV in deciding whether the action referred to in paragraphs 7a or 7b should be taken, CHNAVPERS or CMC shall include in the endorsement to the Secretary under the provisions of enclosure (7) or enclosure (8) an assessment of the officer's potential for future mobilization.

#### 8. Dropping from the Rolls

a. Under sections 1161, 12684, and 6408 of reference (a), the President or SECNAV, depending upon the applicable statute, may drop from the rolls of an Armed Force a Regular or Reserve officer who:

(1) has been absent without authority for at least 3 months,

(2) has been sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final, or

(3) (except a warrant officer) has been sentenced to confinement for more than 6 months by a court-martial, when the officer has served in confinement for a period of 6 months and his or her sentence becomes final.

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For purposes of this section, finality of the sentence of a civilian or military court will occur upon completion of all appeals to which the defendant is entitled by law.

b. Action to initiate dropping an officer from the rolls shall normally be undertaken by CHNAVPERS or the DC/S (M&RA), on a case-by-case basis, after a finding that one or more of the above conditions exist, and that the return of the officer to military control for processing for separation for cause under this instruction will serve no useful purpose.

(1) Dropping from the rolls of officers of Regular components or Reserve officers of flag or general rank will be accomplished by action of the President.

(2) Dropping from the rolls of officers of Reserve components, other than officers of flag grade, will be accomplished by action of the Secretary.

c. Neither a hearing nor a Board is required in order to drop an officer from the rolls. However, the officer so considered shall be notified of such prospective adverse action (or reasonable efforts shall be made to provide such notification if actual notification cannot be made) and provided the opportunity to respond within 30 days of receipt of notification. Upon completion of the dropping from the rolls action, notification will be addressed to the officer concerned. No certificate of discharge is issued upon separation by dropping from the rolls since such service is not characterized. For the purpose of any Federal benefit based upon characterization of service, dropping from the rolls shall be considered as a discharge under Other Than Honorable conditions. Except for members who are absent without authority, members who are entitled to retired pay may not be dropped from the rolls unless they are ineligible to receive their retired pay under authority of subchapter II, chapter 83, title 5 U.S.C.

#### 9. Special Provisions

a. No officer shall be discharged under Other Than Honorable conditions, under this instruction, without first being afforded the opportunity to have his or her case heard before a BOI.

b. If proceedings by a BOI are mandatory in order to release an officer from active duty or discharge the officer, such action will not be taken except upon the approved recommendation of such a board.

10. Limitations

a. Subject to subparagraph 10c, an officer who is processed for separation because of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) or Parenthood (paragraph 6 of enclosure (3)) and who is determined to have established that he or she should be retained on active duty may not again be processed for separation for the same reasons within the 1-year period beginning on the date of that determination.

b. Subject to subparagraph 10c, an officer who is processed for separation for Misconduct, Moral, or Professional Dereliction (subparagraph 1b of enclosure (3)), Homosexual Conduct (subparagraph 1c of enclosure (3)), or in the Interest of National Security (subparagraph 1d of enclosure (3)) and who is determined to have established that he or she should be retained on active duty may again be required to show cause for retention at any time.

c. An officer may not again be processed for separation under subparagraphs 10a or 10b solely because of performance or conduct which was the subject of previous proceedings, unless the findings and recommendations of the board that considered the case are determined to have been obtained by fraud or collusion.

d. Whenever evidence of preservice misconduct is presented to a board, the board may consider it only for the purpose of deciding whether to recommend separation or retention of the respondent. Such evidence shall not be used in determining the recommendation for characterization of service. The board shall affirmatively state in its report that such evidence was considered only for purposes of determining whether it should recommend retention or separation of the officer.

e. Performance or conduct identified more than 5 years prior to the initiation of processing for separation under paragraph 2 of this enclosure shall not form the basis for processing under this enclosure.

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11. Final Disposition of Cases Processed Under Board Procedures.

The Secretary shall take final action in any case wherein the commission or warrant of an officer is to be terminated or the officer is to be discharged under board action. In addition to directing retention on active duty the Secretary may take the following actions:

a. Retirement and Resignation. Any officer (Regular or Reserve, Temporary or Permanent) who is being considered for removal from active duty in accordance with this instruction and who is eligible for voluntary retirement under any provision of law on the date of such removal, may, upon approval by the Secretary, be retired in the highest grade in which he or she served satisfactorily as determined by the Secretary under the guidelines of enclosure (6). Such a retirement is considered voluntary for purposes of determination of the officer's retirement. An officer who is not eligible for retirement may submit a request for a qualified or unqualified resignation or a resignation for the good of the service. Eligibility for retirement pay of officers convicted by a court other than a court-martial or other military court shall be determined in accordance with subchapter II, chapter 83, title 5 U.S.C.

(1) Requests for such resignations and retirements shall be addressed to the Secretary of the Navy, via CHNAVPERS or the DC/S (M&RA), as appropriate.

(2) CHNAVPERS or the DC/S (M&RA) shall, unless the request is denied, submit the request to the Secretary with the case file and recommendations. CHNAVPERS and the DC/S (M&RA) shall normally deny, on behalf of the Secretary, such resignations and requests for retirement while actions against the officer under the UCMJ are pending.

(3) Unless the requested characterization of service is consistent with the guidelines contained in enclosure (5) of this instruction, such resignations will normally be denied.

(4) Under Section 6329 of reference (a), no officer of the Navy or Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.

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(5) A request for resignation or retirement has no effect unless accepted or approved by SECNAV.

b. Discharge. Any officer (Regular or Reserve, Temporary or Permanent) discharged for cause in accordance with this enclosure, if ineligible for voluntary retirement under any provision of law on the date of such removal, shall, at the direction of the Secretary, be:

(1) Honorably discharged in the grade then held when the only basis for discharge is Substandard Performance of Duty under subparagraph 1a of enclosure (3), or Parenthood under paragraph 6 of enclosure (3).

(2) Discharged with an appropriately characterized discharge under guidelines in enclosure (5) when the grounds for discharge are Misconduct, Moral or Professional Dereliction, Homosexual Conduct, or because Retention is not Consistent With the Interests of National Security under subparagraphs 1b, 1c, or 1d of enclosure (3).

c. The Secretary may retain the officer under the provisions of paragraph 7 of this enclosure.

GUIDELINES ON CHARACTERIZATION OF SERVICE

1. General Guidance. Characterization of service incident to separation for cause will be based on the officer's record of performance and conduct including particularly the acts or omissions giving rise to separation for cause.

a. When the separation is solely for reasons constituting substandard performance of duty or solely for removal of ecclesiastical endorsement, the characterization must be Honorable.

b. The serious nature of misconduct and moral or professional dereliction on the part of a commissioned officer requires that the separation normally be under Other Than Honorable Conditions. However, characterization as General (Under Honorable Conditions) may be warranted under the guidelines below. Characterization as Honorable is not authorized unless the officer's record is otherwise so meritorious that under the particular circumstances any other characterization would be clearly inappropriate.

c. When separation is for reasons of national security, the characterization should be based on the seriousness of the acts or omissions and the guidelines below.

2. Characterization of Service

a. Honorable. An officer whose quality of service has generally met the standards of acceptable conduct and performance of duty for officers of the Naval Service, or is otherwise so meritorious that any other characterization would be clearly inappropriate, shall have his or her service characterized as Honorable.

b. General (Under Honorable Conditions). If an officer's service has been honest and faithful but significant negative aspects of the officer's conduct or performance of duty outweigh the positive aspects of the officer's military record, it is appropriate to characterize that service as General (Under Honorable Conditions).

c. Under Other Than Honorable Conditions. This characterization is appropriate when the officer's conduct or performance of duty, particularly the acts or omissions that give

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rise to the reasons for separation, constitute a significant departure from that required of an officer of the Naval Service. Examples of such conduct or performance include acts or omissions which, under military law, are punishable by confinement for 6 months or more; abuse of a special position of trust; an act or acts which bring discredit upon the armed services; disregard by a superior of customary superior-subordinate relationships; acts or omissions that adversely affect the ability of the military unit or the organization to maintain discipline, good order, and morale or endanger the security of the United States or the health and welfare of other members of the Armed Forces; and deliberate acts or omissions that seriously endanger the capability, security, or safety of the military unit or health and safety of other persons.

d. Limitations

(1) Service will be characterized as Honorable when the grounds for separation are based solely on preservice activities, other than intentional misrepresentation, or omission of facts, in obtaining an appointment or in official statements or records.

(2) Service will be characterized as Honorable when the sole reason for discharge is personal abuse of drugs, as defined in reference (f), and the evidence of the unlawful drug involvement is developed as a result of the officer's volunteering for treatment under a self-referral program for treatment of drug abuse in accordance with reference (f).

(3) Conduct in the civilian community of a member of a Reserve component who is not on active duty or active duty for training may form the basis for characterization as Under Other Than Honorable Conditions only if such conduct affects directly the performance of the member's military duties. Such conduct may form the basis for characterization as General (Under Honorable Conditions) only if such conduct has an adverse impact on the overall effectiveness of the Naval Service, including military morale and efficiency. If a member tests positive for the presence of illegal drugs in the member's body while in an active or inactive duty status, the member's drug abuse shall be deemed to have affected directly his/her readiness and performance of military duties.

e. Service will be characterized as Honorable or General (Under Honorable Conditions), consistent with the guidance in

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paragraphs 1 and 2, when the sole basis for separation is homosexual conduct unless aggravated acts are included in the findings. A separation under Other Than Honorable Conditions may be issued if there is a finding that the officer attempted, solicited, or committed a homosexual act:

- (1) By using force, coercion, or intimidation;
- (2) With a person under 16 years of age;
- (3) With a subordinate in circumstances that violate customary military superior-subordinate relationships;
- (4) Openly in public view;
- (5) For compensation;
- (6) Aboard a military vessel or aircraft; or
- (7) In another location subject to military control, under aggravating circumstances noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a military vessel or aircraft.



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GUIDELINES ON RECOMMENDATIONS -  
GRADE AT RETIREMENT

1. Satisfactory Service in the Grade Currently Held. Officers who retire from the Naval Service may be retired in the highest grade that they served on active duty satisfactorily, as determined by the Secretary. This determination will be made by the Secretary without a BOI in those cases, forwarded per paragraph 1c or 2 of this enclosure, where the officer has submitted a voluntary retirement request. In any other case where CHNAVPERS or DC/S (M&RA) determines that retirement in lesser grade may be appropriate, a BOI shall be tasked, in accordance with enclosure (8), to recommend whether the officer should be retired in the current grade or a lesser grade. In making this recommendation, the BOI must determine the grade in which the officer last served satisfactorily for a period of not less than 6 months. The BOI determination is merely a recommendation and the final decision as to retirement grade rests with the Secretary. Finally, the procedures in this enclosure do not apply to officers retiring in the grades of O-9 and O-10. DODINST 1320.4 of 14 March 1995 (NOTAL) provides procedures applicable to officers retiring in grades O-9 and O-10.

a. General Guidance. A recommendation that an officer has or has not served satisfactorily in the grade currently held should be based on a determination made after considering all relevant factors, such as the nature of the misconduct and its effect on professional performance. If a BOI is held, the record must support such a determination. In the case of a retirement-eligible officer, the BOI or officials reviewing the retirement request should recommend retirement in a lesser paygrade if the BOI or reviewing officials determine that the officer's misconduct was serious enough to constitute a significant departure from the conduct required of an officer of the Naval Service. Examples of such misconduct include, but are not limited to: abuse of special position of trust; an act or acts which bring discredit upon the armed services; disregard by a superior of customary superior-subordinate relationships; acts or omissions that adversely affect the ability of the military unit or the organization to maintain discipline, good order, and moral or endanger the security of the United States or the health and welfare of other members of the Armed Forces; and deliberate acts or omissions that seriously endanger the capability, security, or safety of the military unit or health and safety of other persons. However, when the officer's record, in spite of the misconduct, is otherwise so

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meritorious as to demonstrate that the officer served satisfactorily in the grade currently held, the recommendation should be for retirement in that grade.

b. Specific Factors. In considering whether an officer served satisfactorily in the grade currently held, the following factors should normally be considered:

- (1) Nature and severity of the misconduct;
- (2) The misconduct and its relation to, and effect on the performance of military duties.
- (3) All fitness reports and other portions of the service record which reflect performance in the current grade. In this regard it is appropriate to consider whether the misconduct was known by reporting seniors, and if not, what effect, if any, it might have had on the officer's record.
- (4) Time in current grade, and relation between such time and the time of misconduct.
- (5) Other relevant matters presented either by the record or the officer.
- (6) Chain of command recommendations.

c. Forwarding Procedures. All voluntary retirement requests from officers who have been the subject of any substantiated adverse finding or conclusion from an officially documented investigation or inquiry (except minor traffic infractions) shall be forwarded to the Secretary for a retirement grade determination if: for officers in paygrades O-7 and O-8, the investigation or inquiry was completed subsequent to the officer's most recent Senate confirmation; or, for officers in paygrades O-5 and O-6, the investigation or inquiry was completed within 2 years of the date the voluntary retirement request is submitted. However, CHNAVPERS or DC/S (M&RA) may, in their discretion, forward a case completed prior to the 2 years before the date of the voluntary retirement request if circumstances warrant.

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(1) Prior to forwarding a voluntary retirement request to the Secretary, CHNAVPERS or DC/S (M&RA) shall notify the officer in writing of the following:

(a) That the officer's voluntary retirement request is being forwarded to the Secretary for a retirement grade determination.

(b) The factual basis supporting the substantiated adverse finding or conclusion from the officially documented investigation or inquiry.

(c) The recommended retirement grade.

(d) That the officer may submit a rebuttal or decline to make a statement.

(e) That the officer has the right to confer with appointed counsel as provided in paragraph 3 of enclosure (7).

(f) That the officer will, upon request, be provided copies of the papers to be forwarded to the Secretary. Classified documents may be summarized.

(g) That the officer has the right to waive subparagraphs (d), (e), and (f), and that failure to respond shall constitute waiver of the rights in these paragraphs.

(h) That the officer has a specified period of time to respond to the notification as provided in paragraph 4 of enclosure (7).

(2) The officer's response shall be forwarded to CHNAVPERS or DC/S (M&RA) with appropriate command recommendations. CHNAVPERS or DC/S (M&RA) shall ensure that the request and all related material has been reviewed by at least two general or flag officers and that each such general or flag officer has made an independent recommendation regarding retirement grade. CHNAVPERS or DC/S (M&RA) shall then forward the case file to the Secretary, via the Chief of Naval Operations or Commandant of the Marine Corps, with a retirement grade recommendation.

d. The final determination of retirement grade rests exclusively with the Secretary. Commanders are not authorized to enter into agreements in which an officer is to be retired at a particular grade level.

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## 2. Retirement-Eligible Officer

a. Any officer being considered for administrative show cause proceedings in accordance with this instruction who is eligible for voluntary retirement under any provision of law may submit a request for voluntary retirement. The request shall be submitted via CHNAVPERS or DC/S (M&RA) and shall include the following information:

(1) A statement that the officer understands that a BOI will not be convened to make a recommendation to the Secretary on retirement grade.

(2) A statement that the officer understands that the Secretary may retire him or her in a lesser paygrade than currently held; and that the retirement grade will be the highest grade in which the officer served satisfactorily, as determined by the Secretary.

(3) A statement that the officer has consulted with counsel, including counsel's name, grade, and branch of service. If civilian counsel is retained, provide name and address.

(4) A statement that the officer admits that his or her performance of duty was substandard, and if the officer is being required to show cause for misconduct, that he or she admits committing the misconduct.

(5) A statement that the request is voluntary and may be withdrawn only with the permission of the Secretary.

(6) A statement by the officer that he or she does or does not desire to provide supplemental material to the Secretary for consideration. Any supplemental material provided by the officer will be attached to the request.

b. The request shall also include a copy of the investigation or other documentation pertaining to the misconduct.

c. The request shall be forwarded with appropriate command endorsements. Each endorsement shall include a recommendation to approve or disapprove the request and a statement indicating the highest grade in which the officer served satisfactorily. Any relevant information or investigative material not included in the original request should also be included. Any new factual material shall be provided to the officer for review and comment.

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NOTIFICATION PROCEDURE

1. The Notification Procedure Shall Be Used When:

a. A probationary Regular officer, a probationary Reserve officer above CWO-5 with fewer than 5 years of commissioned service, or a permanent Regular or Reserve warrant officer with fewer than 3 or 5 years of service, respectively, as a warrant officer is processed for separation for any reason specified in paragraph 1 of enclosure (3).

b. Action is taken to terminate the appointment of a Temporary LDO or warrant officer for any reason specified in paragraph 1 of enclosure (3).

c. Action is taken to remove a Reserve officer from an active status under the provisions of paragraph 13 of enclosure (3).

d. Action is taken to process a Regular or Reserve officer for separation for the reason specified in paragraph 5 (Failure to Accept Appointment to O-2) of enclosure (3).

2. Notification by Commanding Officer. The commanding officer shall notify the officer in writing of the following:

a. The reason or reasons specified in enclosure (3) for which the action was initiated, including the specific factual basis supporting the reason.

b. The recommended characterization of service is Honorable or General (Under Honorable Conditions) if such a recommendation originated with CHNAVPERS or DC/S (M&RA).

c. That the officer may submit a rebuttal or decline to make a statement.

d. That the officer may tender a resignation in lieu of separation processing in accordance with subparagraph 11a of enclosure (4).

e. That the officer has the right to confer with appointed counsel as provided in paragraph 3 of this enclosure.

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f. That the officer will, upon request, be provided copies of the papers to be forwarded to the Secretary to support the proposed separation. Classified documents may be summarized.

g. That the officer has the right to waive subparagraphs c, d, e, and f, and that failure to respond shall constitute waiver of the rights in these subparagraphs.

h. That the officer has a specified period of time to respond to the notification as provided in paragraph 4.

### 3. Right to Counsel

a. A respondent has the right to consult with qualified counsel when the Notification Procedure is initiated, except under the following circumstances:

(1) The respondent is attached to a vessel or unit operating away from or deployed outside the United States or away from its overseas home port, or to a shore activity remote from Judge Advocate resources;

(2) No qualified counsel is assigned and present at the vessel, unit, or activity;

(3) The commanding officer does not anticipate having access to qualified counsel from another vessel, unit, or activity, for at least the next 5 days; and

(4) The commanding officer determines that the needs of the Naval Service require processing before qualified counsel will be available.

b. Nonlawyer counsel shall be appointed whenever qualified counsel is not available under paragraph 3a. An appointed nonlawyer counsel shall be a commissioned officer with no prior involvement in the circumstances leading to the basis of the proposed separation, and no involvement in the separation process itself. The nonlawyer counsel shall be encouraged to seek advice by telephone or other means from any judge advocate on any legal issue relevant to the case whenever practicable. When a nonlawyer counsel is appointed, the appointing letter shall state that qualified counsel is unavailable for the applicable reasons

in paragraph 3a of this enclosure and that the needs of the Naval Service warrant processing before qualified counsel will be available; a copy of the appointing letter will be attached to each copy of the written notice of separation processing. The respondent may also consult with a civilian counsel at the respondent's own expense. Respondent's use of a civilian counsel does not eliminate the requirement to furnish counsel in paragraph 3a or 3b of this enclosure. Consultation with civilian counsel shall not delay orderly processing per this instruction.

4. Response

a. The respondent shall be provided a reasonable period of time, normally 5 working days, but more if in the judgment of the commanding officer additional time is necessary, to act on the notice. An extension may be granted by the commanding officer upon a timely showing of good cause by the officer.

b. If the respondent fails to acknowledge receipt of notification or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

c. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made in the case file. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate notification statement, the selection of rights will be noted and notation as to the failure to sign will be made.

5. Submission to the Secretary

a. The commanding officer shall forward the case file to the Secretary via CHNAVPERS or DC/S (M&RA), as appropriate. The case file shall contain a copy of the written notification to the respondent, documentation substantiating the conduct or performance, and any written statement which the respondent desires to make. If the respondent tenders a resignation, it shall accompany the case file.

b. CHNAVPERS or DC/S (M&RA) shall forward the case file to the Secretary with recommendations on each reason for separation

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and the facts supporting it, the recommendation for separation, and a recommendation for acceptance or rejection of a resignation, if one is tendered.

c. CHNAVPERS or DC/S (M&RA) may disapprove the separation of probationary commissioned officers when the reasons for separation are solely in the category of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) and there is not sufficient evidence to support one or more of those reasons.

6. Action of the Secretary

a. The Secretary shall determine whether there is sufficient evidence supporting the allegations set forth in the notification for each of the reasons for separation.

b. If there is sufficient factual basis for separation, the Secretary may order the officer separated. If the officer tenders a resignation, the Secretary may accept or reject it.

c. If the Secretary determines that the recommended Honorable or General (Under Honorable Conditions) characterization of service is inappropriate, he may refer the case directly to a BOI.

d. The Secretary may retain the officer under the provisions of paragraph 7 of enclosure (4).



ADMINISTRATIVE BOARD PROCEDURES

1. SHOW CAUSE AUTHORITY

a. Purpose

(1) The purpose of the Show Cause Authority is to review and evaluate the record of any commissioned officer (other than a commissioned warrant officer, retired officer, or temporary LDO) to determine whether the officer should be required because of substandard performance of duty, misconduct, professional or moral dereliction, or because retention is not clearly consistent with the interests of national security, to show cause for retention on active duty.

(2) The Show Cause Authority shall review and evaluate the records of officers referred under paragraph 2 of enclosure (4) or referred by the Secretary. In cases where processing is directed by the Secretary under paragraph 6c of enclosure (7), the Show Cause Authority shall direct that a BOI be convened.

b. Decision and Findings of the Show Cause Authority. The Show Cause Authority shall review and evaluate the record of the officer concerned and:

(1) Evaluate all information presented about the case under consideration.

(2) Determine whether the record contains sufficient information as to one or more of the reasons specified in this instruction to require the officer to show cause for retention before a BOI.

(a) Cases supported by a preponderance of the evidence that involve unlawful drug involvement or homosexual conduct shall be referred to a BOI.

(b) No recommended characterization of service shall be made except when appropriate under paragraph 1b(4) of this enclosure.

(3) Close the case if the authority determines that the record does not contain sufficient information to require the officer concerned to show cause for retention or to warrant referral to a BOI.

(4) Determine whether, in the case of a probationary commissioned officer, the record supports separation but the circumstances warrant characterization of honorable or general per enclosure (5) (Guidelines on Characterization of Service).

c. Action After Show Cause Authority Findings

(1) If the Show Cause Authority closes the case, all proceedings shall cease.

(2) If the Show Cause Authority determines that referral of the case to a BOI is appropriate, the Show Cause Authority shall convene, or direct to be convened, a BOI under this enclosure. A statement of the reason for making such a determination shall be provided to the officer in writing.

(3) If the Show Cause Authority recommends that a probationary commissioned officer be separated with an Honorable or General (Under Honorable Conditions) discharge, the Show Cause Authority shall initiate or direct the initiation of the notification procedure outlined in enclosure (7).

2. BOI

a. Purpose. The purpose of a BOI is to give an officer a full and impartial hearing at which he or she may respond to and rebut the allegations which form the basis for separation for cause and/or retirement in the current grade or a lesser grade and present matters favorable to his or her case on the issues of separation and/or characterization of service.

b. Convening Authority. The Show Cause Authority shall convene, or direct to be convened, a BOI upon determination that an officer should be required to show cause for retention. A BOI shall also be convened by such authority when required under the provisions of enclosures (3), (4), or (6).

c. Active Duty Orders and Expenses. In no case shall the affording of a hearing to an officer, who is not otherwise on active duty at that time, place the officer on, or return the officer to, active duty. There is no authority for the issuance of any form of initial orders to active duty for the sole purpose of facilitating appearance by an officer for a hearing. There is no authority for the payment or reimbursement of any expenses which may be incurred by an officer, or by any person in his or

her behalf, in connection with any administrative separation proceeding under these regulations.

d. Membership, Recorder, Legal Advisor. BOIs shall consist of not less than three officers in the same Armed Force as the respondent.

(1) In the case of Regular commissioned officers other than temporary LDOs and warrant officers, members shall be highly qualified and experienced officers in the grade of O-5 or above, except that at least one member shall be in the grade of O-6 or above. Each member shall be senior in grade to any officer to be considered by the board. They shall be Regular officers on the active duty list.

(2) In the case of Reserve commissioned officers other than warrant officers, members shall be highly qualified and experienced officers serving on active duty or in an active status in the grade of O-5 or above, except that at least one member shall be in the grade of O-6 or above. Each member shall be senior in grade to any officer to be considered by the board. At least one member must be a Reserve officer.

(3) A BOI must have at least one member from the same competitive category as the respondent. This is especially important when considering an officer for substandard performance. However, in cases involving small competitive categories, isolated geographic locations, or for reasons of operational necessity, competitive category membership may be waived by the convening authority if no suitable officer is reasonably available.

(4) In the case of temporary limited duty and warrant officers, the members comprising the board shall be senior to the respondent unless otherwise directed by the Secretary.

(5) At least one member shall be an unrestricted line officer. Such officers should have command experience, whenever possible.

(6) The convening authority is not limited to officers under his or her direct command in selecting qualified officers to sit on a BOI.

(7) When a sufficient number of highly qualified and experienced active duty officers are not available, the convening authority shall complete Board membership with available retired

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officers who meet the criteria of paragraph 2d(1) and (2) other than the active duty or active status list requirement, and who have been retired for fewer than 2 years.

(8) Officers with personal knowledge pertaining to the particular case shall not be appointed to the Board considering the case. No officer may be a member of more than one board convened under this instruction to consider the same officer.

(9) The senior member shall be the presiding officer, and rule on all matters of procedure and evidence, but may be overruled by a majority of the Board. Board members are subject to challenge for cause only. If appointed, the legal advisor shall rule finally on all matters of procedure, evidence and challenges except challenges to himself or herself. The convening authority will rule finally on all challenges for cause to the legal advisor.

(10) The convening authority shall appoint a nonvoting Recorder to perform such duties as appropriate. The recorder shall not participate in closed sessions of the Board.

(11) The convening authority may appoint a nonvoting legal advisor to perform such duties as the Board desires. The legal advisor shall not participate in closed sessions of the Board.

e. Notice to Respondent. The respondent shall be notified in writing at least 30 days before the hearing of his or her case before a BOI, of each of the reasons for which he or she is being required to show cause for retention in the Naval Service, the least favorable characterization of service which may be recommended by the Board, and of the rights of a respondent. When the Board is required in the case of a retirement-eligible officer, to consider whether to recommend that the respondent be retired in the current grade or a lesser grade, the respondent shall be informed of all reasons therefor, and the right to present evidence that his or her service, in the grade currently held, has been satisfactory.

f. Rights of a Respondent. The respondent shall be given the following rights, which may be exercised or waived:

(1) Reasonable additional time, as determined necessary by the Board or the Convening Authority, to prepare his or her case. In addition to the 30 days provided in paragraph 2e, the

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respondent may, for good cause, further petition the convening authority, in a timely manner, for a continuance. Requests for continuance will be decided by the convening authority if made prior to the convening of the BOI. Once convened, the senior member may rule on such requests or refer them to the convening authority for decision.

(2) The right to counsel, as provided in paragraph 2g.

(3) The opportunity to present matters in his or her own behalf. If suspected of an offense, the officer should be warned against self-incrimination under article 31, UCMJ, before testifying as a witness. Failure to warn the officer shall not preclude consideration of the testimony of the officer by the BOI.

(4) Full access to, and copies of, records relevant to the case, except that information or material shall be withheld if the CHNAVPERS or DC/S (M&RA) determines that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent that the interests of national security permit.

(5) The names of all witnesses in advance of BOI proceedings. Failure to provide any information or the name of a witness shall not preclude the board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board.

(6) The right to challenge any member for cause. The respondent may submit to the convening authority for appropriate action, any relevant matter which, in his or her view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the convening authority or the legal advisor to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in the membership of the Board falling below the number required in paragraph 2d of this enclosure, the convening authority shall appoint a new member who is qualified per that paragraph. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

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(7) The right to request from the Convening Authority or the BOI the appearance before the Board of any witness whose testimony is considered to be pertinent to the case, as provided in paragraph 2i.

(8) The right to submit, at any time before the board convenes or during the proceedings, any matter from the respondent's service record, letters, answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(9) The respondent and counsel may question any witness who appears before the BOI. Testimony of witnesses shall be under oath or affirmation.

(10) The right to give sworn or unsworn testimony. The respondent may only be examined on sworn testimony. The respondent should be warned against self-incrimination as required by article 31, UCMJ. Failure to so warn the respondent shall not preclude consideration of the testimony by the BOI.

(11) The respondent or counsel may present oral or written argument, or both, on the matter to the Board.

(12) The respondent shall be provided with a copy of the record of the proceedings in the case and a copy of the findings and recommendations of the Board. In cases involving classified matter withheld in the interests of national security, any record or information to be provided the respondent will be edited prior to delivery to him or her to remove classified material and preserve its integrity.

(13) The respondent may submit a statement in rebuttal to the findings and recommendations of the BOI for consideration by CHNAVPERS and SECNAV.

(14) The respondent may appear in person, with or without counsel, at all open proceedings of the Board.

(15) Failure of the respondent to invoke any of these rights shall not be considered as a bar to the BOI proceedings, findings, or recommendations.

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g. Counsel

(1) Respondent is entitled to have appointed as counsel by the convening authority, a lawyer certified per article 27(b), UCMJ.

(2) Respondent may request military counsel of his or her choice provided the requested counsel is reasonably available.

(3) The determination as to whether individual counsel is reasonably available shall be made per the procedures set forth in section 0131 of JAGINST 5800.7C, "Manual of the Judge Advocate General" for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondent must elect between representation by appointed counsel and representation by individual counsel. A respondent may be represented in these proceedings by both appointed counsel and individual counsel only if the Convening Authority, in his or her sole discretion, approves a written request from the respondent for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing.

(4) Respondent may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel.

h. Waiver. Respondent may waive any of the aforementioned rights before the BOI convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraph 2f of this enclosure.

i. Witnesses

(1) Witnesses whose testimony will add materially to the case shall be invited to appear to offer testimony before the Board if such witnesses are reasonably available.

(2) Witnesses not within the immediate geographical area of the Board are considered not reasonably available, except as provided for in subparagraph (4).

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(3) Statements or depositions shall be admitted and considered by BOI from witnesses not reasonably available to testify during a board proceeding.

(4) The convening authority shall request that a commanding officer make available, for personal appearance before a BOI, active duty or civilian witnesses under his or her jurisdiction whose personal appearance is essential to a fair determination, unless they:

(a) Are unavailable within the meaning of Military Rule of Evidence (M.R.E.) 804(a), or;

(b) Decline an invitation to testify before a Board. Civilian employees may be directed to appear by their supervisors. Military personnel can be ordered to appear by their commanding officer.

(5) Respondent will specify in his or her request for witnesses to the convening authority or, once proceedings have commenced, the BOI, the type of information the witness is expected to provide. Such a request shall contain the following matter:

(a) A synopsis of the testimony that the witness is expected to give.

(b) An explanation of the relevance of such testimony to the issues of separation or characterization.

(c) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

(6) Requests for witnesses may be denied if not requested in a timely manner.

(7) Witnesses not on active duty must appear voluntarily and at no expense to the government, except as provided for by subparagraph (9).

(8) The convening authority shall make all final decisions on the appearance of witnesses.



(9) If the convening authority determines that the personal appearance of a witness is necessary, he or she will authorize expenditure of funds for production of the witness only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) advises that:

(a) The testimony of a witness is not cumulative;

(b) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;

(c) Written or recorded testimony will not accomplish adequately the same objective;

(d) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and the significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(10) If it is determined that the personal testimony of a witness is required, the hearing will be postponed or continued, if necessary, to permit the attendance of the witness.

(11) The hearing shall be postponed or continued to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(a) When the presiding officer determines that the personal testimony of the witness is not required;

(b) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

(c) When a civilian witness declines to attend the hearing.

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j. Hearing. Hearings by BOIs must be conducted in a fair and impartial manner to ensure that the respondent has the opportunity to present his or her case. At the discretion of the convening authority, a BOI may be convened to hear the cases of multiple respondents.

(1) BOIs are not courts-martial and the rules of evidence do not apply.

(2) Oral or written matter not admissible in a court of law may be accepted by BOIs.

(3) Oral or written matter presented may be subject to reasonable restrictions as to authenticity, relevance, materiality, and competency as determined by the BOI.

(4) Except for closed sessions during which the board will deliberate on the evidence presented, the proceedings of the board should normally be open to the public at the discretion of the convening authority. Once convened, the senior member may close the proceedings upon motion by either side upon good cause shown.

k. Decision of BOI. The board will make the following determination, by majority vote, based on the evidence presented at the hearing.

(1) A finding on each of the reasons for separation specified (note: where a reason for separation is based on an approved finding of guilty by a court-martial or a civilian criminal conviction, such a finding of guilty or criminal conviction shall be binding on the BOI; however, in all other cases, a finding on a reason for separation shall be based on a preponderance of the evidence), and

(2) One of the following:

(a) That the respondent is recommended for separation from the Naval Service for the specific reason or reasons provided in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) supported by a preponderance of the evidence. Based on those reasons, the evidence presented, the overall record of service, and consistent with enclosure (5), the Board must recommend a characterization of service.

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(b) That none of the reasons specified are supported by sufficient evidence presented to warrant separation for cause and the case is, therefore, closed.

(3) The Board shall recommend separation by reason of unlawful drug involvement if it finds that a preponderance of the evidence supports that finding under subparagraph 1b(2) of enclosure (3).

(4) The Board shall recommend separation for misconduct by reason of homosexual conduct if it finds that one or more of the circumstances requiring separation under subparagraph 1c of enclosure (3) is supported by a preponderance of the evidence.

(5) In the case of a retirement-eligible officer, if separation is recommended, the Board shall recommend whether the officer should be retired in the current grade or a lesser grade. The Board must recommend the grade in which the officer last served satisfactorily for a period of not less than 6 months.

1. Record of Proceedings. The Convening Authority shall make a separate record of proceedings for each respondent.

(1) It shall include: (1) a transcript of the BOI's proceedings, including the evidence of record, and (2) a report of the findings and recommendations of the Board. In all cases, the transcript shall be in summary form unless a verbatim transcript is directed by the convening authority, CHNAVPERS or DC/S (M&RA).

(2) In addition, it shall include:

(a) The individual officer's service and background.

(b) Each of the specific reasons from enclosure (3) for which the officer is required to show cause for retention.

(c) Each of the acts, omissions, or traits alleged.

(d) The position taken by the respondent with respect to the allegations, reports, or other circumstances in question and the acts, omissions, or traits alleged.

(e) The findings on each of the reasons for separation specified.

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(f) The recommendations of the Board that the respondent be separated and receive a specific characterization of service, or, if retirement-eligible, that the officer be retired in the current grade or in a lesser grade per subparagraph 2k(5), or the finding of the Board that separation for cause is not warranted and that the case is closed.

(g) A copy of all documents and correspondence relating to the convening of the Board, e.g., witness requests.

(3) The BOI transcript shall be authenticated by the signature of the senior member of the board only. The report of the findings and recommendations shall be signed by all members of the board and by the counsel for respondent (or by the respondent himself or herself if counsel was not elected) immediately upon completion of the BOI.

(4) Any nonconcurring member(s) shall sign the report and submit separate minority report(s) which will include the extent of nonconcurrence with the Board report as to each finding and recommendation and the reasons therefor.

(5) The counsel for respondent (or respondent if no counsel was elected) shall be provided a copy of the record of proceedings and shall be provided an opportunity to submit written comments to CHNAVPERs or DC/S (M&RA) within 10 days of service. Such comments will be submitted via the respondent's chain of command, however, the respondent may submit a copy directly to CHNAVPERs or DC/S (M&RA). A certificate of service should be included with the record of proceedings verifying submission to respondent's counsel or respondent.

m. Action on the Record of Proceedings of the BOI. The record of proceedings shall be submitted via the convening authority to CHNAVPERs or DC/S (M&RA), as appropriate, for termination of proceedings or review and endorsement prior to forwarding to the Secretary for final determination. This submission shall include any minority report and rebuttal or statement of the respondent. The record of proceedings of a BOI convened solely to determine the grade in which a retirement-eligible officer should be retired shall be forwarded directly to CHNAVPERs or DC/S (M&RA) for a forwarding endorsement to the Secretary, who will make the final determination of the grade in which an officer shall be retired. If a retirement-eligible officer who has not submitted a voluntary retirement request has

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failed to show cause for retention, the BOI shall make a recommendation concerning retirement grade as set forth in subparagraph 2k(5).

n. Action on the Report of the BOI

(1) The report of a BOI that recommends separation shall be delivered to the Secretary, with any desired recommendations of the CHNAVPERS or DC/S (M&RA), for final determination.

(2) If the BOI closes the case, all proceedings will be terminated.

(3) If the BOI recommends separation or retirement, SECNAV may:

(a) Direct retention;

(b) Direct separation of the respondent for the specified reasons, and a characterization of service not less favorable than that recommended by the BOI; or

(c) Direct retirement of the respondent in the highest grade satisfactorily held as determined by the Secretary.

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GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT1. Responsibility

a. Only the service member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is a basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

b. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

c. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

d. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by SECNAV.

e. The guidelines in this enclosure do not apply to activities of defense criminal investigative organizations and other DoD law enforcement organizations.

2. Definitions

a. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

b. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that, under pertinent official directives, is recognized as a "command."

c. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

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d. Homosexual conduct. A homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

(1) Homosexual Act. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

(2) Statement that a Member is a Homosexual or Bisexual, or Words to That Effect. Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts. This may include statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

(3) Homosexual Marriage or Attempted Marriage. When a member has married or attempted to marry a person known to be of the same biological sex.

(4) Propensity to Engage in Homosexual Acts. A likelihood that a person engages in or will engage in homosexual acts, which is more than an abstract preference or desire to engage in homosexual acts.

e. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

### 3. Basis for Conducting Inquiries:

a. A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

b. A basis for discharge exists if:

- (1) The service member has engaged in a homosexual act;
- (2) The service member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or
- (3) The service member has married or attempted to marry a person of the same sex.

c. Credible information does not exist when:

- (1) The officer is suspected of engaging in homosexual conduct, but there is no credible information as described, to support that suspicion;
- (2) The only information is the opinions of others that an officer is homosexual;
- (3) The inquiry would be based on rumor, suspicion, or capricious claims concerning an officer's sexual orientation; or
- (4) The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

d. Credible information exists when:

- (1) A reliable person states that he or she observed or heard an officer engaging in homosexual acts, or saying that he or she is a homosexual or bisexual, or is married to a member of the same sex;
- (2) A reliable person states that he or she heard or observed an officer make, or discovered that an officer has made a spoken or written statement that a reasonable person would believe was intended to convey the fact that the officer engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or



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(3) A reliable person states he or she observed behavior that amounts to a nonverbal statement by an officer that he or she is a homosexual or bisexual; i.e., behavior a reasonable person would believe was intended to convey the statement that the officer engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

#### 4. Procedures

a. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

b. Commanders shall exercise sound discretion in determining if credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

c. Commanders or appointed inquiry officials shall not ask, and service members shall not be required to reveal, whether a member is a heterosexual, a homosexual, or a bisexual. However, upon receipt of credible information of homosexual conduct (as described in paragraph 3), commanders or appointed inquiry officials may ask service members if they engaged in such conduct. But the service member shall first be advised of the DoD policy on homosexual conduct (and rights under article 31, UCMJ, if applicable). Should the service member choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a service member about any information provided by him or her in the course of the fact-finding inquiry or any related proceeding, nor does it provide the service member with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the service member, in any proceeding.

d. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

e. A statement by a service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member shall be given an opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or have a propensity or intent to engage in homosexual acts.

f. The service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

5. Legal Effect. The procedures in this enclosure create no substantive or procedural rights.